

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 9, 2002

**I. PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. ROLL CALL

Present: Nitafan, Sandhu, Galang, Hay, Williams
Absent: None
Staff: DeLeon, Faubion, Fujimoto, Guido, Heyden

**III. PUBLIC
FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV. APPROVAL OF
MINUTES** *December
12, 2001*

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of December 12, 2001;

Motion to approve the minutes of December 12, 2001 as submitted.

M/S: Williams/Hay

AYES: 5

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced that the new subcommittee rotation has been assigned for the quarter. Also, the Limelight nightclub application has filed an appeal to the City Council. Staff has 60 days to process the appeal to City Council unless Limelight allows an extension. However, the Limelight and the Mall are meeting to decide whether to go forward with the appeal or to restructure their application to come back before the Planning Commission.

Ms. Heyden requested that the January 26, 2002 Midtown Workshop be canceled and that it be combined with the January 30, 2002 special Planning Commission Midtown meeting. The items that will be discussed are the final EIR, General Plan Amendments, Specific Plan and Rezonings and Zoning Code text amendments. If necessary, action can be continued at the February Planning Commission meetings if additional discussion is needed.

Ms. Heyden also announced that the Housing Element would be coming before the Planning Commission on January 23, 2002.

In response to **Commissioner Hay's** question regarding when the Midtown materials would be received, Ms. Heyden stated that the packet would be ready on January 25, 2002.

Ms. Heyden mentioned that the only additional information that will go out in the packet is a staff report. She recalled the McCarthy Ranch rezoning project that took place a couple of years ago, which included a 12-page staff report with illustrations and maps. She mentioned that the Midtown packet would be similar as it is elaborate and lays out the four components of the entire project.

Commissioner Hay mentioned that the Planning Commissioners should already have copies of the draft EIR and Midtown specific plan and that if anybody needs additional copies, it is a good idea to get them soon.

In response to **Commissioner Williams's** question regarding the time of the special meeting, Ms. Heyden replied that the January 30, 2002 meeting would begin at 7 p.m.

Chair Nitafan mentioned that **Vice Chair Sandhu** would be the Chair at the Midtown meeting since he must abstain from the project.

Vice Chair Sandhu mentioned that his Planning Commission term ended in December, and that he is scheduled to interview with the City Clerk on January 29, 2002, the day before the meeting. Another Chair might need to be appointed for the Midtown meeting, if he is not appointed.

Commissioner Hay mentioned his concerns about not having a Chair at the January 30, 2002 meeting, and asked if the issue could be addressed beforehand.

Ms. Heyden suggested to agendize the appointment of Chair for the Midtown meeting on the January 23, 2002 Planning Commission meeting agenda.

Chair Nitafan welcomed the first meeting of the year and wished all of the citizens of Milpitas a Happy New Year.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Hay/Sandhu

AYES: 5

NOES: 0

VII. CONSENT CALENDAR

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

There were no changes to the consent calendar.

Chair Nitafan opened the public hearing on Item Nos. 1, 2, and 4, noting Item No. 5 has been withdrawn.

There were no speakers from the audience.

Motion to close the public hearing on Item No. 2 only and continue Item Nos. 1 and 4 to the dates indicated on the staff report.

M/S: Hay/Williams

AYES: 5

NOES: 0

Motion to approve the consent calendar on Item Nos. 1, 2, and 4, as submitted, with staff recommendation and special conditions noted in the staff reports as follows.

***1 USE PERMIT AND HILLSIDE SITE & ARCHITECTURAL REVIEW-AMENDMENT (UP2001-37, SA2001-81):** Request to construct a 1,100 square-foot guest house with basement on a 4.4-acre Hillside parcel at an existing single-family residence located at 461 Vista Ridge Drive (APN: 42-30-7). Applicant: Javier Mercado. Project Planner: Annelise Judd, 586-3273. (Recommendation: Continue to January 23, 2002)

***2 USE PERMIT NO. P-UP2001-42:** A request to operate an Indian market with video rentals at 438 South Main Street (APN: 086-40-11). Applicant: Norris J. Mitchell. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)

***4 MINOR TENTATIVE PARCEL MAP:** A request to consolidate two parcels into one legal lot in order to provide required on-site parking (APN: 022-24-005 and 022-24-032). Applicant: George Famous for Pacific Bell. Project Planner: Staci Pereira, 586-3278. (Recommendation: Continue to February 13, 2002)

***5 USE PERMIT NO. 1598:** (Continued from November 28, 2001) A request to co-locate telecommunication antennas on an existing 100-foot monopole at 200 Serra Way (APN: 86-07-032). Applicant: MetroPCS. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Note Receipt and File, Application Withdrawn)

M/S: Hay/Sandhu

AYES: 5

NOES: 0

VIII. PUBLIC HEARING

Chair Nitafan opened the public hearing on Item No. 1.

1. S-ZONE AMENDMENT APPLICATION (P-SA2001-84): (1535 Landess Avenue, Home Depot Pro Shop, Greenberg Farrow Architecture)

Troy Fujimoto, Assistant Planner, presented a request to convert an existing shopping center space to a Home Depot store for contractors. Conversion work includes a new pallet enclosure, front roll-up (loading) door, generator and enclosure. Mr. Fujimoto noted staff's recommendation of approval based on the findings and special conditions in the staff report.

Commissioner Williams asked how would the public know that the Pro Shop is open only to contractors and mentioned his concerns about trucks parked in the back of the previous Home Depot store, creating noise in the morning. He also asked whether the existing gates would be consistently closed to prevent the historic problems from recurring.

Mr. Fujimoto responded that secured gates would still continue to be a condition of approval and that the applicant can address the other issues.

In response to **Vice Chair Sandhu**, Mr. Fujimoto responded that the old Home Depot application could be revived since it is a permitted use, but the new store must comply with the previous "S" Zone Conditions.

Commissioner Williams stated that he felt all the conditions were never complied with since Home Depot moved to the Great Mall.

Mr. Fujimoto clarified that the previous Home Depot wanted to expand the existing garden center and convert it to a storage area. Since the project was never completed, Home Depot wouldn't have to abide by the conditions of approval related to the expansion. Home Depot is responsible for adhering to all the other prior conditions of approval.

Commissioner Hay asked the difference between the Home Depot Pro shop and the regular Home Depot and Mr. Fujimoto deferred the question to the applicant.

Chair Nitafan asked the City Attorney for clarification of how Home Depot can reopen.

Kit Faubion, City Attorney, explained that for any permitted use, staff has to look and see what the zoning ordinance says. In this district, a hardware store is permitted, and anyone can get a building permit as long as they comply with the conditions of approval. She mentioned that a conditional use permit for a garden center runs with the land and not with the applicant,

and explained that the garden center requires a use permit, but the hardware store doesn't. She added that staff, with this new application, has included a condition requiring compliance with all previously approved conditions.

Chair Nitafan asked what kind of traffic flow could be expected at the proposed Pro shop.

Related to Chair Nitafan's question, Commissioner Hay asked whether a traffic analysis is required for an "S" Zone Amendment.

Mr. Fujimoto mentioned that if there is adequate parking for a permitted use, then a traffic study is not necessary unless neighboring streets are impacted. A traffic analysis is required if there is an increase of 100 peak hour trips in addition to what is allowed in the specific area. For this application, parking is actually being reduced from the previous Home Depot store, so no new traffic analysis was required.

Commissioner Hay inquired as to what type of vehicles are expected at the proposed Pro shop.

Mr. Fujimoto responded that three axle vehicles can be expected in addition to pick up trucks and that the applicant can explain in more detail.

Commissioner Galang asked about customer pick up times and location.

Mr. Fujimoto responded that customer pick up will occur at the front of the store during normal business hours.

Chair Nitafan asked whether the general public could shop at the store.

Mr. Fujimoto explained that the clientele would be contractors, builders or other people that plan on buying in bulk quantities.

Applicant Bill Boyle, Greenberg Farrow Architecture, explained that 50% less visitors are expected at the Pro shop than the previous Home Depot store. The proposed Pro shop is a warehouse that will have bulk sales. Commercial and professional shoppers are expected because they buy bulk sales, while the general public doesn't. He explained that this would benefit the Home Depot location at the Great Mall because the pick up trucks would move to the Pro shop.

Mr. Boyle also addressed residential concerns and gave a brief history of the previous Home Depot store. He mentioned how Home Depot was built on the edge of town so neighbors wouldn't be bothered by noise. Nearby residences were soon built which impacted the relationship. Mr. Boyle explained how Home Depot operates in a coherent fashion such as including loading doors in the back of the building to expedite delivery. Home Depot also went the extra mile to put garbage and deliveries in an enclosed area. He explained how Home Depot wants to share their ideas for the proposed reopening and

thinks that the store will be a lot friendlier. One of the ideas is to keep gates closed at all times so trucks cannot circulate through.

Gary White, Home Depot District Manager, explained that customers would not come with their contractors to select materials that occur at their Expo stores because the Pro shop will not have design displays. He also stated that at the Pro shops, a great deal of inventory is surcharged by most customers.

Chair Nitafan asked how many customer trucks would come in daily.

Mr. White clarified that contractors would not bring large trucks and that the inventory would not appeal to homeowners due to selection. Cement and lumber are the only products that would be available at both stores. He also mentioned that no décor items would be available at the Pro shop.

Commissioner Williams asked how would the public differentiate between the two stores.

Mr. White replied that over a short period of time, customers would realize the difference.

Mr. Boyle added that until the public realizes the distinction, traffic confusion would be short-lived.

Commissioner Williams asked if there would be signage that says "Contractors only?"

Mr. Boyle responded that the signage would say "Supply house for contractors," but indicated that they will consider further clarifying signage.

Commissioner Williams also expressed concern over the lack of store management continuity and the need for Home Depot to address this.

Mr. White indicated that through increased training of new managers, they have been able to keep the Mall store in great shape and would do the same at the Pro shop to address the storage and delivery concerns. In addition, he added that when trucking curfews are violated, they could be reported. After further reservation stated by Commissioner Williams, Mr. White guaranteed that this would not be a problem.

Commissioner Galang also expressed his concerns about noise and traffic problems and asked how Home Depot plans on addressing these issues.

Commissioner Hay felt staff and Home Depot have done a great job with the new store to address previous problems and asked Mr. White to establish contact with the neighbors, to which Mr. White agreed.

Mr. Boyle presented a photo of how they would like to design their front main door to address staff's concerns and conditions of approval. The door would be made out of glass. He added that he would also like to change their signage to read "supply store" instead of "Pro store."

Chair Nitafan opened the public hearing.

Jerry See, 1380 French Court, feels that signage alone would not stop non-contractors from entering the store. He is also concerned about noise coming from forklifts, trucks, and generators.

Hsiao Su, 1370 French Court, mentioned his concerns about sounds from forklifts and delivery trucks, and is tired of repeatedly having to call to complain. He reported that Home Depot had previously used a chain-linked, fenced area for outside storage and is concerned because a portable dumpster was parked near residences.

Mr. Kim, 1446 Kuzi Lane, has problems with the very loud dumpster noise and back up beeping noise from trucks and forklifts. He felt a different kind of Home Depot store should locate there and that his association is ignored by the manager.

Concerned resident, 1564 David Lane, felt the buying patterns of contractors should be analyzed and the size of trucks. He also stated that traffic getting onto Landess has become worse over the past year.

Elizabeth (last name inaudible), Kuzi Lane, asked about the pallet enclosure location. She felt Home Depot has a hidden agenda about the use of this store location and doesn't want a repeat of non-compliance that occurred previously. She no longer trusts Home Depot regarding hours of operation and staff behavior.

Mark Lancaster, 1510 Kuzi Lane, feels that even though traffic would be less, it would be noisier because of larger products and trucks. He indicated that delivery hours were never abided by previously and the parking lot was always cleaned after midnight.

Linda Lam, (owns a restaurant at the shopping center), stated that her business is down 20% since Home Depot left and added that Home Depot was there first before the residents. She mentioned that the parking lot is dark at night and wants the new store because it would help her business.

Motion to close the public hearing.

M/S: Hay/Galang

AYES: 5

NOES: 0

Chair Nitafan asked Mr. Boyle to address the concerns raised by

**Close Public
Hearing** Item No. 1

the speakers.

Mr. Boyle replied that the Pro shop doesn't plan on selling items that the general public would be interested in buying. Also, the store would not be loading and unloading behind the building. The Home Depot management team would have to address people using their parking lot at night. Mr. Boyle also mentioned that deliveries would occur at the northwest corner of the building whereas pick ups would be in the front. The garden center area would be used to stage materials and sweeper hours could be restricted with a special condition. Also, there would be no seasonal sales items at the store. Mr. Boyle also offered to not have forklifts after 7 p.m. outside and there could be a 10-foot high pallet enclosure wall. Mr. Boyle reiterated that they are not required to submit a traffic study.

Mr. Fujimoto confirmed Mr. Boyle's traffic study statement.

Commissioner Hay asked about the portable dumpster.

Mr. Boyle replied that an open dumpster would be replaced with a compactor.

Commissioner Galang asked how many forklifts would be used and Mr. White responded "three, but they would not be used at the same time."

Commissioner Williams asked Mr. White to address Home Depot's management credibility.

Mr. White could only restate that they would obey the City's restrictions.

Chair Nitafan requested that Home Depot attend the nearby Homeowner Association (HOA) meetings when the HOA requests it.

Commissioner Hay made a **motion** to approve "S" Zone Amendment Application (P-SA2001-84) with staff recommendations and conditions of approval as stated in the staff report, with the following changes:

a) Condition No. 7 revised to read:

All pallets shall be placed or stored within the pallet enclosure and shall not exceed the height of the enclosure. The height of the enclosure shall be 10 feet.

b) Addition of Condition No. 13 to read:

Sweepers shall not sweep the parking lot between 10 p.m. and 6 a.m.

c) Addition of Condition No. 14 to read:

No forklifts shall be used outside after 7 p.m.

Chair Nitafan requested a condition to require a six month review to ensure neighbors would be contacted about whether they feel Home Depot has complied with the conditions of approval.

Ms. Heyden suggested that if that is the intent, the six month review should include a public hearing and notice.

Mr. Boyle expressed concern with a six month review that could put their whole business in question.

Vice Chair Sandhu mentioned how people are very happy with the Home Depot at the Great Mall and there is no need for a second Home Depot in Milpitas. He feels that Milpitas is very small and land is scarce. The proposed area needs a different type of store with a friendly environment. Vice Chair Sandhu stated he is opposed to the approval.

Commissioner Williams felt there is a great benefit to occupying a vacant space and that the relationship between the store and neighborhood is what needs to be addressed.

Ms. Faubion needed clarification about the morning hours for forklift usage.

Commissioner Hay suggested 8 a.m.

Dave Jabber, Home Depot Store Manager, stated that beepers could be turned off when forklifts are outside.

Commissioner Hay suggested 6 a.m. rather than jeopardizing safety.

The maker of the motion to approve "S" Zone Amendment Application (P-SA2001-84) with staff recommendations and conditions of approval amended the motion regarding forklift hours to read:

No forklifts shall be used outside between 7 p.m. and 6 a.m.

And to add another new condition to read:

Within six-months of a certificate of occupancy, this S-Zone Amendment (P-SA2001-84) shall be reviewed by the Planning Commission at a fully noticed public hearing in order to verify compliance with the conditions of approval. The applicant shall submit all necessary public hearing notification materials and fees.

M/S: Hay/Galang

AYES: 4

NOES: 1 (Vice Chair Sandhu)

IX. ADJOURNMENT There being no further business, the meeting was adjourned at 9:10 p.m. to the next regular meeting of January 23, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 23, 2002

**I. PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. ROLL CALL

Present: Nitafan, Sandhu, Galang, Hay, Lalwani, Williams

Absent: Chua

Staff: Faubion, Guido, Heyden

III. PUBLIC FORUM

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV. APPROVAL OF
MINUTES** *January 9,
2002*

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of January 9, 2002.

Motion to approve the minutes of January 9, 2002 as submitted.

M/S: Galang/Sandhu

AYES: 5

NOES: 0

ABSENTIONS: 1 (Lalwani – due to absence at the January 9, 2002 meeting)

V. ANNOUNCEMENTS

Tambri Heyden, Planning Manager, announced a correction to the next Planning Commission meeting date on the Agenda, and noted that the next special Planning Commission meeting for the Midtown Plan will be held on Wednesday, January 30, 2002.

Ms. Heyden also announced that Great Mall Management, Commander Berg and two representatives from the Home Depot Great Mall task force met with Parc Metro to talk about noise and traffic issues with the Limelight application.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

VII. CONSENT CALENDAR

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

There were no changes to the consent calendar.

Chair Nitafan opened the public hearing on Item Nos. 2 and 3.

There were no speakers from the audience.

Motion to close the public hearing on Item No. 2 only and continue Item No. 3 to the February 13, 2002 meeting.

M/S: Sandhu/Hay

AYES: 6

NOES: 0

Motion to approve the consent calendar on Item Nos. 2 and 6.

***2 USE PERMIT (P-UP2001-41):** Request to operate a church at 660-680 E. Calaveras Boulevard, in conjunction with a joint use parking agreement within the Industrial Park (MP-S) zoning district (APN: 86-28-47). Applicant: Sheri Merriott on behalf of Crosspoint Chinese Church of Silicon Valley. Project Planner: Annelise Judd, 586-3273. (Recommendation: Approval with conditions)

***6 S-ZONE AMENDMENT APPROVAL (P-SA2001-93):** A request to increase the wattage of the existing parking lot lighting at the Great Mall at 1100 South Main Street (APN: 086-24-055). Applicant: Swerdlow Real Estate Group, attn: Jack Williams. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)

M/S: Hay/Lalwani

AYES: 6

NOES: 0

VIII. PUBLIC HEARING

Chair Nitafan opened the public hearing on Item No. 1.

1. REVIEW OF DRAFT GENERAL PLAN HOUSING ELEMENT: *(Staff Contact: Felix Reliford)*

Felix Reliford, Principal Housing Planner, recommended the Planning Commission open the public hearing and continue it to February 13, 2002, as staff needed additional time to finalize the draft.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

Motion to continue Item No. 1 to February 13, 2002.

M/S: Hay/Williams

AYES: 6

NOES: 0

IX. NEW BUSINESS

2. REVIEW OF FY 2000-2001 REDEVELOPMENT AGENCY FINANCIAL REPORT AND ANNUAL REPORT: *(Staff Contact: Emma Karlen)*

Chair Nitafan opened the public hearing on Item No. 1.

Emma Karlen, Finance Director, presented the highlights of the Redevelopment Agency Report and revenue compared to the previous year.

Ms. Karlen explained that expenditure highlights consist of \$18.9 million capital outlay, \$5.2 million debt service payments, \$700,000 debt issuance costs, \$228,000 operating expenses, and \$792,000 housing fund expenses.

Commissioner Hay congratulated Finance for a good year and a 6% rate of return on investments. He also asked about the acquisition of the land of the Santa Clara Valley VTA and asked if the land is for the proposed Renaissance Hotel.

Ms. Karlen responded that the Renaissance hotel is currently pending negotiations.

Commissioner Hay asked what projections the City has for the new year.

Ms. Karlen responded that a continued increase is expected.

Vice Chair Sandhu asked for clarification of the start date for the accrued \$262 million in Redevelopment Agency revenue.

Ms. Karlen responded that revenue has been accounted for since the Redevelopment agency was formed in 1979.

In response to **Commissioner Lalwani's** question, Ms. Karlen

responded that the City is still receiving interest on income.

Commissioner Galang asked what the status and location of the housing units referenced in her report.

Ms. Karlen responded that the units are still under construction, and that they will be located on Capitol Avenue and Montague Expressway.

Chair Nitaфан asked where \$114,000 from intergovernmental revenue came from.

Ms. Karlen responded that it came from the supplemental property tax.

Chair Nitaфан asked how the expenditures increased by \$2,520.

Ms. Karlen replied that this was due to funding of employee salaries.

Chair Nitaфан asked about the \$8 million of capital outlay.

Ms. Karlen responded that this was due to the City Hall project.

Chair Nitaфан congratulated the City on a good year.

Commissioner Hay asked if money from the general fund could be transferred to the Redevelopment Agency.

Ms. Karlen responded "No".

3. FLOOD INSURANCE REPORT PRESENTATION (Staff Contact: Mike McNeely)

Mike McNeely, City Engineer, gave an update on the Flood Insurance Program and explained that discounts on flood insurance premiums could be allowed based on how the City administers its program. The City's Class 5 rating, granted by the Flood Emergency Management Agency (FEMA), allows residents a 25% premium discount, saving Milpitas residents \$375,000 annually. Mr. McNeely also mentioned that Milpitas is the only community in California to achieve this goal.

He also explained how over the years, areas in the City have been removed from the Flood Hazard Area maps due to flood control improvements the City, U.S. Army Corps, and the Santa Clara Valley Water District have made in these areas. Two ways discounts could be achieved are through improvements and map amendments.

Commissioner Hay recalled a recent Berryessa Creek flood and asked why it had occurred.

Mr. McNeely described that the creek's flood control measures were not completed and improved as they are now.

Commissioner Hay asked whether both Berryessa and Penetencia improvements would benefit residents and

wondered which has a higher flood risk.

Mr. McNeely responded that both would benefit residents, and thought they had an equal risk given past history. He mentioned that the portion of Berryessa in Milpitas floods more frequently.

Commissioner Williams talked about the sediment accumulation in the creek channels over the years which encourages trees to take root.

Mr. McNeely explained that it is difficult to get creek cleanup permits from the U.S. Army Corp of Engineers.

Commissioner Williams asked about the risk that past erosion has.

Mr. McNeely responded that bridges are normally cleaned out prior to storm season, but stated that he would have to take a look into this to find out when it was last done.

Chair Nitafan asked if there is a fee for obtaining an elevation certificate.

Mr. McNeely responded "Yes" and that the fee varies depending on the elevation change.

Chair Nitafan asked about the upper Penetencia Creek, Calero Creek, and Berryessa Creek projects.

Mr. McNeely responded that each is about a \$50 million project.

**4. 6 MONTH REVIEW
OF USE PERMIT NO.
1576: (Islamic
Research Association
at 533-535 Sinclair
Frontage Road)**

Frank Guido, Assistant Planner presented a six month review of parking for a religious assembly use (Islamic Research Association – IRA) in an industrial condominium complex (Wrigley Oaks Business Park) at 533-535 Sinclair Frontage Road, and recommended approval based on the conditions explained in the staff report.

Mr. Guido also distributed a letter and photos received by an adjacent business owner, prior to the start of the meeting who had concerns about parking conflicts.

Asgar Padash, Applicant, stated that the complaint only occurred on one day and expressed an objection to staff's recommended action of painting the parking spaces with their church name.

Commissioner Lalwani wondered if IRA has tried to talk to the adjacent business owner who has complained.

Mr. Padash mentioned that the owner is not interested.

Mary Kay Oster, Property Manager, indicated that from her

observation, there were only two nights that there was a parking problem. She felt that instead of painting the parking stalls with an identifier, since it would be dark when the spaces are used, someone directing traffic would be better.

Dave Richerson, 1920 Yosemite Drive, recalled that another project was required to paint their stalls and expressed his satisfaction with another review period.

Chair Nitafan mentioned that an additional review has been added by staff as a new condition.

Commissioner Hay asked the applicant whether the church self monitors its parking.

Mr. Padash indicated that they do not allow their members to park on site unless they are elderly.

Commissioner Galang asked for clarification regarding IRA's rental of a facility off-site during Ramadan.

Mr. Padash informed that they rented only once.

Chair Nitafan asked the Planning Commission for discussion regarding marking the parking space.

Commissioner Williams stated that he did not have a problem with deleting it given today's social climate.

Commissioner Lalwani also had no problem with it either since it would be dark.

Commissioner Hay felt traffic control would be the best solution.

Vice Chair Sandhu was also in agreement with Commissioner Hay.

Motion to approve the 6-month review of Use Permit No. 1576 with all conditions of approval with the exception of 13 (c). The motion amends condition 13 to read:

13.

(Additional Condition 1) To gain greater compliance with the use's visitors using only their own or shared parking spaces, the applicant shall post a map illustrating the location of the applicant's own and shared spaces, along with a sign, at their own entry. The sign shall have white lettering on a dark background (at least in English; bilingual allowed), reading:

"IRA visitors to park in the following areas during times noted:

- Thursday after 7:30 p.m. and Sunday after 1 p.m. = spaces # 533, 535, spaces # (insert shared address numbers), visitor spaces assigned to the IRA, and off-site

- All other times = spaces # 533, 535, visitor spaces assigned to the IRA, and off-site”

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

5. APPOINTMENT OF CHAIR TO PRESIDE OVER MIDTOWN SPECIFIC PLAN PUBLIC HEARINGS

(Staff Contact: Tambri Heyden)

Tambri Heyden, Planning Manager, mentioned how Chair Nitafan and Commissioner Chua would not be able to participate in the January 30, 2002 Midtown Planning Commission hearing due to a conflict of interest. Under normal circumstances, the gavel would be passed to Vice Chair Sandhu, but since Vice Chair Sandhu has a reappointment interview on January 29, 2002, there is a possibility that he may not be reappointed.

According to the draft by-laws, the gavel must be passed to the Commissioner with the most years of service. Commissioner Hay and Commissioner Williams both have the longest and equal years of service. Therefore, she advised that one of these Commissioners be appointed by consensus.

Commissioner Williams said that he would be happy if Commissioner Hay would take the lead at the Midtown hearing.

Commissioner Hay accepted and consensus was reached.

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:30 p.m. to the next regular meeting of January 30, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 30, 2002

**I. PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:10 P.M. and led the Pledge of Allegiance.

II. ROLL CALL

Present: Nitafan, Sandhu, Galang, Hay, Williams

Absent: Chua

Staff: Barone, Faubion, Heyden

III. PUBLIC FORUM

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Dave Richerson, 1920 Yosemite Drive, wanted to know what impact Chair Nitafan's, Commissioner Chua's, and Vice Chair Sandhu's real estate licenses and conflict of interest has on the adoption of the Midtown Specific Plan and subsequent actions.

Chair Nitafan responded that it has been established by the Fair Public Practice Committee that if there is a conflict of interest of a project that is brought to the Planning Commission, then it is to their advantage if a member abstains. He is abstaining tonight because his office is located in the Midtown area, whereas Commissioner Chua could have opted to participate, but she chose not to.

Mr. Richerson stated that he wanted to make sure that someone doesn't unknowingly risk the future of Midtown.

Chair Nitafan responded that a quorum is needed which is four out of the seven Planning Commissioners and that a quorum was present.

Kit Faubion, City Attorney, responded that conflict of interest has always been an issue and concern for all council members and commissioners throughout all proceedings. It has been determined that if the Chair cannot participate, then the Vice Chair will preside.

**IV.
ANNOUNCEMENTS**

Chair Nitafan announced that Commissioner Chua has abstained due to conflict of interest and also recognized new Planning Commissioner Debbie Giordano, who will be sworn in prior to the February 13, 2002 Planning Commission meeting.

He also thanked Commissioner Lalwani for her service and contributions as an outgoing Commissioner.

Joe Oliva, Transportation Manager, announced that the Valley Transportation Authority would be holding a public scoping meeting on February 7, 2002 from 6 p.m. to 8 p.m. at Pomeroy Elementary School. The purpose of the meeting is to gather public comment on the Environmental Impact Report for the BART expansion project, which will run from Fremont, through Milpitas through San Jose through Santa Clara. If anyone has questions, they can call him at 408-586-3290.

V. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Hay/Sandhu

AYES: 5

NOES: 0

VI. PUBLIC HEARING

Vice Chair Sandhu opened the public hearing on Item No. 1.

Review and recommendation to the City Council on the following items:

A. Draft Midtown Specific Plan (SP2002-1)

B. Final Environmental Impact Report (EIA No. EA2002-1)

C. General Plan Text (GT2002-6) and Map Amendment (GM2002-8)

D. Zoning Ordinance Text (ZT2002-1) and Map Amendment (ZC2002-1)

Applicant: City of Milpitas. Project Planner: Marina Rush, 586-3272.

Valerie Barone, Planning, Recreation, and Neighborhood Services Director, announced that Marina Rush, who has been working on the Midtown Project for the past three years is home sick, and is pleased to present on her behalf. The Midtown Plan is a project that includes the specific plan, the Environmental Impact Report, general plan map and text changes, and zoning ordinance map and text changes. Ms. Barone stated that the public hearing of the zoning ordinance text and map amendments be will be continued to the February 27, 2002 Planning Commission meeting.

Ms. Barone gave a background of the Midtown Plan. In 1998, City Council funded the Midtown Plan and in 1999, a subcommittee was formed which included Council members Trish Dixon and Jim Lawson and Planning Commissioners Paul Hay and Cliff Williams. A consultant was recommended which was Eckbo, Dean, Austin and Williams (EDAW). The Planning Commission will review the plan tonight, and if approved, the plan will go to City Council on March 19, 2002.

Allen Folks, EDAW, presented a PowerPoint presentation of the Midtown Specific Plan. He mentioned that the purpose of Midtown is to make the area become a pedestrian-friendly place in the heart of Midtown, and also a historical center in the community. A transportation orientation will also be available such as BART and the light rail. It is an excellent time to build a higher density community and residential area. The Midtown plans allow for more residential housing, up to 4,860 housing units for all different incomes, from low to high.

Mr. Folks also mentioned that Midtown isn't a place for single housing. The plan is to maximize development and commercial uses. There is a higher density towards the Great Mall and Capital and Montague Expressway. Midtown provides a vitality of a mixture of uses. Proposed density is 21 per units to the acre to 60 per units to the acre.

Mark Winsor, EDAW, presented the Environmental Impact Report (EIR) and mentioned how hazardous materials, wastewater generation capacity of water pollution, cultural resources, biological resources, and air quality could be mitigated to less than a significant impact. Evaluation indicated the greatest impact on traffic at the following key areas: Great Mall Parkway, Montague Expressway, McCandless Drive, Milpitas Boulevard, South Main Street, Calaveras Boulevard, Tasman Drive, and Abel Street.

Mr. Winsor also mentioned that comments on the draft Environmental Impact report were received via e-mail and 13 comment letters were received for the November 15, 2002 public hearing meeting.

Ms. Barone presented the General Plan text and map amendments and recommended that the public hearing be continued to February 27, 2002 on the zoning ordinance amendments and the development standards and design guidelines (Chapter 8 of the Specific Plan). Ms. Barone also

informed that the majority of the Planning Commission members must vote in favor of the General Plan Amendments and Midtown Specific Plan to forward a recommendation of approval to City Council as required by state law.

Commissioner Williams commended Marina Rush, Associate Planner, on her work and stated that the EIR document is interesting and easy to read. He also remarked that staff did a great job at addressing all the responses from the comment letters. He asked whether the agencies have identified concerns because of the environmental impact situation.

Mr. Winsor explained that if the plan were not put into place, the developmental impact on air quality would be worse. This is an incremental solution to a regional problem.

Commissioner Galang asked about the Midtown Plan's impact on affordable housing.

Mr. Folks responded that the plan recommends expanding the RDA and that the Redevelopment law requires 15% affordable housing.

Commissioner Galang wondered whether Main Street would be a one-way street considering how narrow it is.

Mr. Folks responded, "No" it will remain as two-way street and that narrow streets are preferred because they act as traffic calmers.

Commissioner Hay stated that he had no questions since he has been a Midtown subcommittee member for 2 ½ years.

Vice Chair Sandhu asked if more parking will be accommodated on Main Street.

Mr. Folks stated that it would be reconstructed within the existing right-of-way width and no land from owners will be

needed.

In response to Vice Chair Sandhu's questions, Mr. Folks responded that the Redevelopment Agency will be used to bring in affordable housing.

Vice Chair Sandhu also asked about impacts on electrical power supply.

Mr. Winsor responded that local distribution has been clarified in the EIR document.

Vice Chair Sandhu opened the public hearing.

Bob Olinger, Olinger's Real Estate, 89 S. Main Street, mentioned that developers are very interested in moving forward once the Midtown Plan is approved and are interested in reinvesting.

Jim Burns, 1170 North Avenue, Chairperson of the Senior Advisory Commission, mentioned that the Commission's proposal recommended to Council to put the Senior Center expansion on the DeVries site, which he feels would conflict with the Midtown Specific Plan which recommends to preserve the DeVries House.

Commissioner Hay thanked Mr. Burns for his work on the Commission and indicated that the Plan does not preclude the Commission's recommendation.

Don Mills, 220 South Main Street, mentioned that his church is in the parking lot across from the food bank and asked whether the church could expand the parking lot in the Midtown Plan.

William Connor, 1515 N. Milpitas Boulevard, talked about the Senior Center complex and asked if there are plans for a convention center.

John Estill, Appion Engineers, 760 East Capitol, mentioned his concerns that the proposed zoning for his site may preclude his current contractor's storage yard use.

Peter McDonald, 400 Main Street, Suite 120, Pleasanton, requested that the Mansur property that includes the Jack-in-the-Box restaurant, be included in the Midtown Plan as Gateway overlay in addition to the R-4 recommended in the plan.

Stanley Urek, 452 South Main Street, is concerned with changes in the proposed zoning plan for his two parcels, which are Highway Service and proposed to change to R-4 with a TOD overlay.

Norm LaCroix, 1321 North Hillview Drive, supports the plan, but mentioned his concerns with the Mixed-use district where multi-use and parking are required. He is also concerned with the ten-foot setback and wants a zero lot line instead.

Close Public Hearing **Motion** to close the public hearing.
Item No. 1

M/S: Hay/Galang

AYES: 5

NOES: 0

RECESS

Vice Chair Sandhu called for a ten-minute recess at 8:50 p.m.

Vice Chair Sandhu asked staff to respond to the questions raised during the public hearing.

Ms. Barone summarized the questions into four different areas:

- Can the church on Main Street expand? The answer is "Yes" and the February 27, 2002 design guidelines would give greater clarification as to how.
- Regarding legal nonconforming uses, at the February 27, 2002 meeting, Zoning will be explained in greater detail.

The intent is to allow existing uses until the natural life of the building expires. Extended building life would not be allowed and redevelopment must comply with the plan.

- Regarding the Mansur property, staff doesn't disagree that there may be office potential on the site. The EIR did not evaluate the property for office and the office overlay conflicts with the R-4 residential land use proposed
- Regarding Main Street, there are many small parcels that would be best redeveloped if they were consolidated. Staff doesn't recommend changing this. Questions related to setbacks will be discussed further at the February 27, 2002 Planning Commission meeting.

Commissioner Hay stated that the subcommittee is addressing the I880/I680 connector.

Before making a motion, Commissioner Hay stated that his work on the Midtown Subcommittee has been rewarding. He recognized Planning staff, City Council, the Midtown Subcommittee, and EDAW for their work and vision. He particularly thanked Marina Rush.

Vice Chair Sandhu echoed Commissioner Hay's comments and thanked the public for their input.

Commissioner Williams and Commissioner Galang thanked the public as well.

Motion to recommend certification of the EIR, approval of the General Plan amendments, and of the Midtown Specific Plan (excluding Chapter 8 – Development Standards and Design Guidelines), subject to the change listed in staff's errata sheet. Chapter 8 and the zoning text amendments will be considered at the February 27, 2002 meeting.

M/S: Hay/Williams

AYES: 4

NOES: 0

VII. ADJOURNMENT There being no further business, the meeting was adjourned at 9:00 p.m. to the next regular meeting of February 13, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

February 13, 2002

**I. PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. ROLL CALL

Present: Nitafan, Sandhu, Galang, Giordano, Hay, Williams

Absent: Chua

Staff: Faubion, Fujimoto, Heyden, Judd

**III. PUBLIC
FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV. APPROVAL OF
MINUTES** *January
23, 2002 and
January 30, 2002*

Chair Nitafan called for approval of the minutes of the Planning Commission meetings of January 23, 2002 and January 30, 2002.

Vice Chair Sandhu noted a correction to Page 2 of the January 30, 2002 minutes, stating that he opened the public hearing for Item No. 1, not Chair Nitafan.

Motion to approve the minutes of January 23, 2002 and January 30, 2002 with the corrective change.

M/S: Hay/Williams

AYES: 5

NOES: 0

ABSENTIONS: 1 (Giordano was absent at the meetings)

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced Evelyn Chua's resignation and **Commissioner Hay** asked that Ms. Chua be contacted to attend the February 27, 2002 Planning Commission meeting to recognize her service.

**VI. SERVICE
AWARD
PRESENTATION**

Chair Nitafan presented a plaque to former Commissioner Deepka Lalwani for her one year of service to the City as a Planning Commissioner.

Chair Nitafan called a recess at 7:15 p.m. for all to enjoy refreshments in Deepka Lalwani's honor.

VII. APPROVAL OF AGENDA Chair Nitafan called for approval of the agenda.

Ms. Heyden requested that the order of Item Nos. 5 and 6 be switched.

Chair Nitafan added to the agenda discussion of the March 3, 2002 Planning Commission breakfast under New Business.

Motion to approve the agenda with the additions and changes indicated above.

M/S: Hay/Williams

AYES: 6

NOES: 0

VIII. CONSENT CALENDAR

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

Regarding Consent Item No. 2, **Commissioner Hay** asked what guidelines does staff use to evaluate changes applicants request due to an economic downturn.

Ms. Heyden responded that if the changes are not associated with a previous use permit and are solely beautification or aesthetics related, staff supports the requested change.

Annelise Judd, Assistant Planner, mentioned that staff would have recommended the original project without the beautification changes and further clarified that these were not staff recommended conditions of approval, but the applicant offered them during the original approval.

Chair Nitafan opened the public hearing on Item Nos. 2, 3, 4, 7 and 8, noting that he would abstain on Item No. 8 due to a conflict of interest.

There were no speakers from the audience.

Motion to close the public hearing on Item Nos. 2, 3, 4, 7 and 8.

M/S: Hay/Galang

AYES: 6

NOES: 0

Motion to approve the consent calendar on Item Nos. 2, 3, 4, 7 and 8 as submitted, with staff recommendation and special conditions noted in the staff reports as follows.

***2 "S" ZONE-AMENDMENT (P-SA2002-7):** Request to delete some of the approved site amenities for the R&D office building for "Lightwaves 2020" at 1323 Great Mall Drive (APN 86-24-46). Applicant: Glen Simmons. Project Planner: Annelise Judd, 586-3273. (Recommendation: Approval with Conditions)

***3 USE PERMIT AMENDMENT (P-UA2002-1):** A request to increase restaurant seating from 107 to 134 seats, which would be apportioned as 104 seats indoors, and 30 seats outdoors, at 182 Ranch Drive. (APN: 022-54-011) Applicant: Banana Leaf Restaurant. Project Planner: Frank Guido, 586-3284. (Recommendation: Approval with Conditions)

***4 USE PERMIT (P-UP2001-45) & S-ZONE AMENDMENT (P-SA2001-91):** A request to co-locate antennas on an existing 90-foot PG&E microwave tower and locate associated equipment in an enclosure at 66 Ranch Drive (APN: 022-54-020). Applicant: Metro PCS, attn: Derek Smitheram. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)

***7 MINOR TENTATIVE PARCEL MAP (P-MI2001-3) (Continued from January 9, 2002):** A request to consolidate two parcels into one legal lot (APN: 022-24-005 and 022-24-032). Applicant: George Famous for Pacific Bell. Project Planner: Staci Pereira, 586-3278. (Recommendation: City Council Approval with Conditions)

***8 USE PERMIT (UP2001-37) AND HILLSIDE SITE & ARCHITECTURAL REVIEW-AMENDMENT (SA2001-81) (Continued from January 23, 2002):** Request to construct a 1,100 square-foot guest house with basement on a 4.4-acre

Hillside parcel at an existing single-family residence located at 461 Vista Ridge Drive (APN: 42-30-7). Applicant: Javier Mercado. Project Planner: Annelise Judd, 586-3273.
(Recommendation: Approval with Conditions)

M/S: Hay/Giordano

AYES: 6

NOES: 0

ABSENTIONS: 1 (Chair Nitafan regarding Item No. 8 only)

IX. PUBLIC HEARING

Chair Nitafan opened the public hearing on Agenda Item No. 1.

1. REVIEW OF DRAFT GENERAL PLAN HOUSING ELEMENT (P-GT2002-7 & P-GM2002-9): *(Staff Contact: Felix Reliford)*

Chair Nitafan clarified that he will be participating on this Item because the draft Housing Element is a concept that applies throughout the City, unlike the Midtown Plan where he has excused himself.

Kit Faubion, City Attorney, elaborated on Chair Nitafan's comments, and mentioned how the Midtown Plan and Housing Element are major projects that have a huge impact to the City. Commissioners have been very cautious and careful to examine conflict of interest issues at each important step of the process. Chair Nitafan and Commissioner Giordano have requested guidance from the City Attorney's office on whether they should participate.

Ms. Faubion also mentioned how the draft General Plan Housing Element is a concept plan, and does not require statutory recommendation to City Council. City Council will make the determination to send the draft General Plan Housing Element to the State Department of Housing and Community Development (HCD), who will review and again finalize the formal statutory required hearings that will go before the Planning Commission and City Council again.

Chair Nitafan also clarified that for the final Housing Element approval, the City Attorney will have enough time to research and determine if Chair Nitafan and Commissioner Giordano will be able to participate.

Commissioner Giordano asked what the timeline is for the Housing Element to come back for final approval.

Felix Reliford, Principal Housing Planner, responded that the Housing Element draft, if approved, will be forwarded to the City Council on March 5, 2002 and then sent to the HCD. HCD has up to 60 days to review the draft and make comments, and the final version will be submitted to the Planning Commission and City Council.

Mr. Reliford made a presentation on the draft General Plan Housing Element and recommended forwarding to the City Council as submitted.

Commissioner Hay mentioned how the granny flats issue was determined to be a great deal in the past by the City leaders and that a restricted policy has been adopted.

Mr. Reliford responded that the proposal came from staff and consultant recommendations. He also mentioned that after studying the issues, staff feels that there are other opportunities of affordable housing in regards to size, design standards, and density.

Commissioner Hay referenced Page 7 of the draft Housing Element that states that the updated housing plan approves specific guidelines and principles involving the maintenance and improvement of established neighborhoods. Commissioner Hay asked how granny flats could be justified and consistent in residential neighborhoods.

Mr. Reliford responded that staff and other cities do permit granny flats and that design and development standards are intended to enhance and not be detrimental to neighborhoods.

Commissioner Hay asked how illegal secondary units in the City currently impact the recommendation of the housing element study.

Mr. Reliford responded that the draft policies go hand in hand with the way the current ordinance is written which allows them on corner lots. However, overcrowding occurs whether people get permission or not for such units.

Commissioner Williams commented that the Housing Element document was very informative, but was shocked about the concept of an amnesty program for illegal units. He asked how the details of this would work.

Paul Peninger, Housing Consultant for Bay Area Economics, stated that a study would have to be done to better understand the impacts which would be followed by a very specific ordinance that would be carefully enforced.

Commissioner Williams questioned that if overworked staff did not carefully enforce the ordinance could this be a problem. Mr. Peninger responded "Yes".

Commissioner Giordano referred to Page 3 of the Executive Summary and asked whether housing numbers are rising.

Mr. Peninger replied that housing has risen, comparing 3.37 in 1990 versus 3.47 in 2002.

Commissioner Giordano mentioned her concerns that the housing cost numbers are off because the market was abnormal in 2000. She asked for the table to be updated and has the same concerns raised by others over the amnesty program. Regarding page 16, Commissioner Giordano asked why there are no current overcrowding figures.

Mr. Peninger replied that the Census Bureau doesn't have the data available yet and if it becomes available before adoption, it could be added to the plan.

Commissioner Giordano asked how the dilapidated housing and housing condition surveys were prepared.

Mr. Peninger commented that the survey was based on randomly sampled areas that were recommended by staff to field survey. The survey was also based on Pre-1960 homes.

Following discussion, Commissioner Giordano expressed concern that there is a significant amount of housing areas, such as the Manor development, that are excluded from the survey, and that there are 40 plus year old homes that are old and deteriorated. The same numbers of units in each tract were not surveyed.

Mr. Reliford acknowledged that not all housing areas over 40 years old were surveyed, just those areas that staff targeted as being potentially deteriorating.

Commissioner Giordano felt the survey, identifying deteriorating housing stock is flawed and that lot size is not addressed in the secondary units analysis. She also felt that the 10% requirement for the Floor Area Ratio (FAR) might not be appropriate, concerning secondary units.

Commissioner Galang wanted to know what comments were raised at the two previously held public meetings on the Housing Element.

Mr. Reliford responded that issues that were raised were secondary units, granny flats, allowing more expensive homes, mixed use, executive housing, energy conservation and preserving the hillside.

Chair Nitafan expressed concern over dilapidated houses and densities to provide further housing.

Mr. Reliford responded that staff did not look at changing existing densities and that Association of Bay Area Governments (ABAG) goals are met without it.

Commissioner Hay commented that a policy to provide funds for dilapidated homes could be elaborated to recommend further assistance programs.

Chair Nitafan agreed and mentioned that he would like to see

new housing production and was concerned with infrastructure constraints.

Mr. Reliford clarified that environmental review must be conducted with each new housing project.

Commissioner Hay stated that the Housing Element must be consistent with the existing Circulation Element that addresses traffic.

Chair Nitafan asked where we stand with Below Market Rate (BMR) housing.

Mr. Reliford reviewed the status of each project under the program and that the program is partially funded by the Redevelopment Agency (RDA).

Chair Nitafan feels that there needs to be a greater disclosure to low income homeowners when they move in.

After a question from **Vice Chair Sandhu**, Mr. Reliford clarified that any new census information that is available over the next couple of months could be added to the plan.

Vice Chair Sandhu asked if this is the first time granny flats have been allowed.

Mr. Reliford responded "No", and that the current zoning ordinance allows on corner lots only.

Vice Chair Sandhu feels that the new policy is good and allows for an opportunity to improve existing illegal units.

RECESS

Chair Nitafan called a ten-minute recess at 8:50 p.m.

Chair Nitafan opened the public hearing on Agenda Item No. 1.

Richard Ruth, 1673 Quail Drive, expressed concern that the Housing Element doesn't address the Hillside, nor above moderate-income housing. He also feels that Midtown is too far in the future to address ABAG requirements. Piedmont Road is an area that could meet ABAG requirements as could rezonings. There is land within the Urban Growth Boundary (UGB) that should be studied by a subcommittee within 6 months, to provide the City's housing needs.

Heidi Wolfreid, Yosemite Drive, mentioned her concerns that the City doesn't have the infrastructure to support granny flats and higher densities. Higher densities must be added gradually, and granny flats could do that, along with the amnesty programs. She feels that the City needs to be more specific on its assistance programs.

Michael Elliott, South Bay AFLCIO Labor Council, feels Milpitas has done a good job with housing, but requested that the City increase its RDA set aside for affordable housing from 20% to 30%. He also requested that a study be done.

Shiloh Ballard, Silicon Valley Manufacturing Group, feels that the City has not met the need for low and very low-income housing. She agreed with Mr. Elliott and requested the City increase its RDA set aside for affordable housing from 20% to 30%.

Dave Richerson, 1920 Yosemite Drive, referenced his letter of February 11, 2002 (sent to the City), and stated his concern for unfair housing practices. He cited problems at the Crossings at Montague with "channeling", and recommended that incentives be bonded.

**Close Public
Hearing** Agenda
Item No. 1

Motion to close the public hearing.

M/S: Hay/Giordano

AYES: 6

NOES: 0

Commissioner Giordano asked what is the above moderate housing threshold.

Mr. Reliford responded that it is defined by the Department of Housing and Urban Development (HUD).

Commissioner Giordano stated that the above moderate category in the Element is not broken down further as are other lower categories.

Commissioner Hay replied that the focus was on lower categories.

Commissioner Giordano felt that the chart should be expanded to provide greater details.

Mr. Reliford mentioned that above moderate housing is taken care of without subsidies and felt the need was at the lower levels.

Ms. Faubion clarified that state law specifies what categories to address and that the local law can address it in greater detail.

Commissioner Williams recommended that the amnesty programs be struck.

Commissioner Galang echoed Commissioner Williams' comments.

Commissioner Giordano mentioned her concerns about aging housing stock and feels it needs to be revisited. She wants FAR and lot size to be addressed in the amnesty program study, and also recommends that a section be added to review the City's hillside policies, and how it affects our hillside housing stock due to upper level income over 150,000 not addressed, impact of UGB has not been evaluated, and the policy is currently ten years old.

Commissioner Hay stated that he doesn't support reopening the Hillside and UGB issues, but recommends the study to increase affordable housing set aside. He also would like staff to review the Crossings at Montague complaints raised and come back to the Planning Commission with a report.

Mr. Reliford stated he has been directed to come to the City Council with a report of the Crossings at Montague.

Based on Mr. Reliford's comments, Commissioner Hay agreed that a report to the Planning Commission is not needed and feels that the 5,000 Midtown housing units is adequate and therefore doesn't want the issue of granny flats to be opened up because it increases density in single family areas.

Vice Chair Sandhu feels that the quality of life will improve with addressing the existing illegal granny flats.

Chair Nitafan mentioned the need to expand the City's rehabilitation plan, and feels that making Midtown a part of the Housing Element is not appropriate because it is too far in the future. The UGB should be looked at.

Mr. Reliford summarized the three issues raised, which are: the Amnesty Program, the UGB, and an aging housing stock survey.

Commissioner Hay recommended separate votes for the issues that the Planning Commission raised, for which a consensus would be needed and questioned whether any new census information could be added.

Mr. Reliford suggested a future General Plan amendment to address census information that will become available late this year.

Mr. Reliford offered to look at the Manor neighborhood over the next 60 days.

Consensus was reached.

Ms. Faubion suggested a straw vote on the three issues Mr. Reliford mentioned and the other items that were raised. This was conducted as follows:

Regarding eliminating the Amnesty Program-

AYES: 5

NOES: 1 (Sandhu)

Regarding targeting and rehabilitating aging units which might redirect funds elsewhere-

AYES: 6

NOES: 0

Regarding deleting the policy to conduct a second unit study-

AYES: 5

NOES: 1 (Giordano)

Regarding whether to study lot size and FAR if the second unit study is done-

AYES: 6

NOES: 0

Regarding whether to study the hillside policies and UGB-

AYES: 2 (Nitafan and Giordano)

NOES: 4

Regarding whether to study increasing the RDA affordable housing set aside-

AYES: 6

NOES: 0

Chair Nitafan felt that the other issue raised that Ms. Faubion did not seek a straw vote was the Midtown Plan.

Commissioner Williams felt the Plan is fine as is.

Commissioner Hay concurred.

Motion to recommend approval to City Council of the draft Element subject to the above items except for studying Hillside policies and UGB.

M/S: Hay/Williams

AYES: 6

NOES: 0

**2. S-ZONE
AMENDMENT (P-
SA2002-4):**

*(Applicant:
Swerdlow Real
Estate Group)*

Troy Fujimoto, Assistant Planner, presented a request to amend an existing sign program, including new colors and theme, and new architectural entrance elements, for the Great Mall of the Bay Area, at 1100 South Main Street, and recommended approval with conditions outlined in the staff report with revisions to conditions Nos. 5 and 6 which read as follows:

5. Prior to any sign permit issuance for any other signs on-site, the 73-foot tall, freestanding sign shall be modified to:

- a. include a red border,
- b. provide a yellow background that is exclusively for tenant identification,
- c. identify the "Great Mall" name on a black title block, and
- d. limit the total area for tenant identification to no more than 45% of the entire sign face and organize the listing of tenants vertically, rather than side by side.

6. The sign program for the Great Mall of the Bay Area shall be amended to preclude any tenant names or logos on the elevator tower and to require that the tower color scheme include yellow as a primary component of any signage.

Commissioner Hay expressed his dismay that these signs have been put up without approval and permit. He stated that he has lost track of past Mall approvals and would like to see staff report back on the status.

Tambri Heyden, Planning Manager, stated that staff could do that, but needed at least 30 days to prepare such an informational report.

Commissioner Giordano stated that she did not understand the purpose.

Commissioner Hay replied that a study would list previous approvals that are no longer being pursued by the Mall.

Commissioner Galang asked whether the entry signs are two-sided.

Mr. Fujimoto responded that the entry signs are three-sided.

In response to Commissioner Giordano's question, Mr. Fujimoto responded that the existing nonconforming sign is nonconforming due to the height and will have to be lowered or removed under the sign code amortization.

Commissioner Williams felt the color scheme for the Mall entries need to be evaluated for effectiveness to color blind patrons.

Commissioner Hay mentioned that existing directional arrow signs are not readable and wanted to know whether they are proposing to be changed in color.

Mr. Fujimoto responded "No".

Chair Nitafan stated that the directional signs are one-sided and provide no direction for exiting.

Mr. Fujimoto responded that this directional sign issue could be brought up to the Mall.

Commissioner Hay expressed concern that the sign package colors don't tie together and felt that the Planning Commission should be able to review all signs as at once as part of this approval.

Tim Rydner, applicant representing Sverdlow Real Estate Group, mentioned that he understands the Planning Commission's confusion and stated that most Mall approvals have been implemented. The Mall entry features are intended to be "over the top" to grab attention, and that is the reason for the extensive use of color. Regarding the signage, staff is looking for consistency and he feels that the Mall can go back and see how that could be done. The tower serves to overcome the Mall's locational challenge. Mr. Rydner recognized what the City has done historically to help the Mall address this and would like the City to consider some amount of tenant signage on the tower.

Commissioner Williams reiterated his comments about the entry colors.

Mr. Rydner stated that the numbers on the entry features could help if someone couldn't distinguish between the colors.

Commissioner Williams expressed concern that the sign package was prepared by three different sign components and not coordinated.

Mr. Rydner explained that the three different components of their sign program serve different purposes which is advertising versus way-finding.

Commissioner Galang asked whether there would be an internal sign system to which Mr. Rydner indicated "Yes", and that there would be a voice recording at the door informing customers which entrance they are coming through.

Commissioner Hay requested City Attorney Kit Faubion's opinion regarding the point he raised earlier about being able to review all the Mall's signs at once.

Ms. Faubion mentioned that the applicant can't bring in other signs that are not part of the package, however, the findings require consistency so that the Planning Commission could deny or recommend conditions of approval regarding how the Mall should address problems with other signs.

Mr. Rydner replied that the Mall is not concerned about getting people out, but rather getting people inside the Mall efficiently.

Commissioner Hay mentioned that he doesn't care for the color yellow and likes the colors red, black and white. He would like to see all signs, as well as colors of directional signs, tied together.

Chair Nitafan opened the public hearing on Agenda Item No.5.

Dave Richerson, 1920 Yosemite Drive, mentioned his major displeasure in that some of the existing signs exist without approval. He feels that signs should come down until they are approved and stated that the color schemes are inconsistent with one another.

**Close Public
Hearing** Agenda
Item No. 6

Motion to close the public hearing.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

Commissioner Hay mentioned that he wanted to make a motion to continue this item so that the Mall can pull together all the necessary information. He doesn't have a problem with the tower tenant signage and entry treatment, but needs to see the whole picture of the elevations. He also wanted to specify a date when the Mall must come back to the Planning Commission with the information.

Ms. Heyden recommended continuing the public hearing to the April 24, 2002 Planning Commission meeting to give the applicant 30 days to submit more information and to give staff time to review.

Mr. Rydner expressed that he wanted greater feedback from rest of the Planning Commission regarding tower tenant signage and stated that he thought it was inappropriate to bring the Mall's internal signage to the Commission.

Consensus was reached that the Planning Commissioners had no problem with tower tenant signage.

Mr. Richerson asked whether historical displays are under Planning Commission review.

Mr. Fujimoto responded "Yes" but not aesthetic review.

Chair Nitafan pointed out there is a discrepancy between the height of the tower versus the height of the nonconforming sign.

Mr. Fujimoto clarified that they are two different things.

Commissioner Hay amended his motion to include reopening the public hearing and continuing the item to the April 24, 2002 Planning Commission meeting.

M/S: Hay/Williams

AYES: 6

NOES: 0

3. USE PERMIT (P-UP2002-2) & S-ZONE AMENDMENT (P-SA2002-2):

*(Applicant:
Swerdlow Real
Estate Group)*

Troy Fujimoto, Assistant Planner, presented a request to locate a new 25-foot freestanding sign at the Great Mall of the Bay Area (at the intersection of Great Mall Parkway and Great Mall Drive), at 1100 South Main Street, and recommended approval based on the findings and special conditions outlined in the staff report.

Mr. Rydner, Applicant, referenced Special Condition No. 4 which reads:

4. Prior to sign permit issuance, the applicant shall submit to the Planning Division a revised sign plan showing the following:

(a) all tenant panels of the same shape and size and adjoining one another in a horizontal listing to consolidate their location on the sign and

(b) a total tenant sign area (panel area) not exceeding more than 75% of the circular sign face that identifies the shopping center name.

and doesn't think the Mall will have a problem eliminating Dave and Buster's separate signs on the bottom of the sign structure, but recommends that the 75% maximum be deleted.

Commissioner Hay asked Ms. Heyden whether staff has problems with Dave and Buster's logo being on the sign and Ms. Heyden responded "No".

Mr. Fujimoto drew the Planning Commission's attention to a handout regarding revisions to Condition No. 9 which reads:

9. If the location of the freestanding sign changes from that approved, the applicant shall submit and receive approval of revised plans showing the new location of the freestanding sign, through the Planning Commission Subcommittee.

Chair Nitafan opened the public hearing on Agenda Item No. 5.

There were no speakers from the audience.

**Close Public
Hearing** Agenda
Item No. 5.

Motion to close the public hearing.

M/S: Hay/Williams

AYES: 6

NOES: 0

Motion to approve Use Permit No. (P-UP2002-2) and "S" Zone Amendment (P-SA2002-2) with revised Special Condition No. 9 stated above, and revised Condition No. 4 deleting 4b, and requiring the sign's color scheme to be re-reviewed by the Planning Commission simultaneously when the sign program application comes back to the Planning Commission.

M/S: Hay/Williams

AYES: 6

NOES: 0

X. NEW BUSINESS Chair Nitafan mentioned that a Community Breakfast will be held on March 3, 2002 at the church on Dixon Landing Road at 7:30 a.m., and invited all Planning Commissioners and citizens to attend.

4. Community Breakfast

Discussion ensued regarding the preparations needed prior to March 3, 2002.

Commissioner Giordano was appointed by consensus to take the lead in organizing the event.

XI. ADJOURNMENT There being no further business, the meeting was adjourned at 11:45 p.m. to the next regular meeting of February 27, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

February 27, 2002

**I. PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. ROLL CALL

Present: Nitafan, Sandhu, Galang, Giordano, Hay, Williams
Absent:
Staff: Barone, Burkey, Faubion, Fujimoto, Heyden, Judd, Oliva, Rush

**III. PUBLIC
FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV. APPROVAL OF
MINUTES** *February
13, 2002*

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of February 13, 2002.

Commissioner Giordano noted a correction to Page 5 which should read as follows:

Commissioner Giordano felt the survey, identifying deteriorating housing stock is flawed and that lot size is not addressed in the secondary units analysis. She also felt that the 10% requirement for the Floor Area Ratio (FAR) might not be appropriate, concerning secondary units.

Commissioner Giordano also noted a correction to Page 6 of the minutes, stating that Heidi's last name was Wolf-Reid.

Commissioner Giordano also noted another correction to Page 7 which should read as follows:

Commissioner Giordano mentioned her concerns about aging housing stock and feels it needs to be revisited. She wants FAR and lot size to be addressed in the amnesty program study, and also recommends that a section be added to review the City's hillside policies, and how it affects our hillside housing stock due to upper level income over 150,000 not addressed, impact of UGB has not been evaluated, and the policy is currently ten years old.

Motion to approve the minutes of February 13, 2002 with the corrective changes.

M/S: Hay/Sandhu

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced that the presentation requested for former Planning Commissioner Evelyn Chua will have to be postponed to the March 27, 2002 Planning Commission meeting since Ms. Chua is out of the country.

Chair Nitafan clarified his statements during the General Plan Housing Element discussion at the February 13, 2002 meeting, by stating that he feels the City's rehabilitation plan needs to be expanded and that making Midtown a part of the Housing Element is not appropriate because it is too far in the future. Also, the UGB should be looked at.

Kit Faubion, City Attorney, informed Chair Nitafan that this is the announcement portion of the meeting and that the minutes were already approved. Consistent with the agenda and the Brown Act, only announcements can be made at this time.

Chair Nitafan asked the citizens and realtors to read the approved minutes and listen to the audio tape because some of his statements were misconstrued.

**VI. APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

Chair Nitafan added to the agenda the March 3, 2002 Planning Commission Community breakfast as Item No. 2 under New Business.

Motion to approve the agenda with the addition indicated above.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**VII. CONSENT
CALENDAR**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

Tambri Heyden, Planning Manager, mentioned that staff was advised by the City Attorney to remove Item No. 2 from the consent calendar.

Commissioner Hay noted his concurrence given that a variance is involved.

Chair Nitafan opened the public hearing on Consent Item No. 3 only.

There were no speakers from the audience.

Motion to close the public hearing on Item No. 3 only.

M/S: Hay/Sandhu

AYES: 6

NOES: 0

Motion to approve the consent calendar with staff recommendation and special conditions noted in the staff report as follows:

***3 "S" ZONE AMENDMENT (P-SA2002-5):** Request to install two, 27-foot tall exterior water storage tanks at 485 Vista Way (APN 86-29-045). Applicant: Calistoga Mountain Spring Water. Project Planner: Staci Pereira, 586-3278. (Recommendation: Approval with Conditions)

M/S: Hay/Giordano

AYES: 6

NOES: 0

Ms. Heyden requested a point of clarification regarding a new condition of approval handed out at the beginning of the meeting for Item No. 3, and asked whether the consent agenda motion included this new condition.

Commissioner Hay indicated "yes".

VIII. NEW BUSINESS

Chair Nitafan opened the New Business items.

1. BACKGROUND AND STATUS REPORT ON THE BART EXTENSION PROJECT *(Staff Contact: Joe Oliva)*

Joe Oliva, Principal Transportation Planner, gave a presentation on the background and status of the BART extension project. Mr. Oliva noted that BART will be extended from Fremont to San Jose through Milpitas and that the 4 million-dollar project is a major investment study.

Commissioner Giordano mentioned that she attended a portion of the Community scoping meeting and asked if staff was pleased with the turnout.

Mr. Oliva indicated that the meeting was far better attended than prior meetings, 40 people attended.

Commissioner Hay mentioned that he serves on the BART Transportation Subcommittee and the Community Working

group and that the input of the public up until this point has not been important. But now, BART impacts will directly effect the City of Milpitas such as design and traffic. It is very important for the City to pursue an outreach program.

Mr. Oliva added that the Transportation Subcommittee felt that VTA was adding pressure, but stood firm in that they went ahead and instructed staff to go out and solicit input from the public. Including outreach comments before making any major decisions shows strong leadership from the Transportation Subcommittee.

Vice Chair Sandhu asked how BART and the Montague Light rail system will be designed.

Mr. Oliva responded that VTA is looking at two options. The first option is taking BART at grade across Capitol Avenue and the second option is a trench. There are pros and cons because the grade would separate the intersections at Montague Expressway, Great Mall Parkway, and Capitol Avenue. The design would take Capitol Avenue up and over near the light rail tracks. VTA feels it is better to have a trench so it can go underneath Montague Expressway.

Vice Chair Sandhu also asked if there is a possibility that BART and the light rail system would use the same tracks.

Mr. Oliva responded "no", that the two systems have completely different tracks.

Commissioner Galang asked about the planning schedule.

Mr. Oliva replied that once the environmental process is cleared through the Federal Transit Administration and the Federal Government, construction should begin in 2005 or 2006. The entire system running from Fremont through Milpitas through San Jose would take about 12 years, tentatively 2014.

Chair Nitafan asked if VTA would be conducting the Milpitas community meetings and if Fremont and San Jose would be invited.

Mr. Oliva responded "yes" and that the meeting is a legally noticed public hearing and everyone is welcome to attend. The City of Milpitas has already been interacting with Fremont and San Jose.

In response to Chair Nitafan's question regarding transportation contacts, Mr. Oliva responded that the team consists of Cindy Maxwell, Mike McNeely, Arlene Deleon, and Steve Burkey.

Chair Nitafan thanked Mr. Oliva for a good presentation.

2. PLANNING COMMISSION COMMUNITY

Chair Nitafan congratulated Commissioner Giordano for doing an outstanding job coordinating the community breakfast.

BREAKFAST: Commissioner Giordano announced that the community is invited for breakfast on Sunday, March 3, 2002 at 7 a.m. at the Sunnyhills Church. The Commissioners will meet at 6 a.m. to start cooking breakfast.

Commissioner Hay asked if staff could briefly describe what topic they will be presenting.

Ms. Heyden responded "The Midtown Plan".

Commissioner Giordano asked if the BART extension would be discussed as well.

Discussion concluded with "no" due to time constraints.

IX. PUBLIC HEARINGS

Chair Nitafan opened the public hearing on Agenda Item No. 2.

3. HILLSIDE SITE & ARCHITECTURAL REVIEW AND VARIANCE (P-VA2002-1): *(Victor and Imelda DeLeon)*

Chair Nitafan reiterated that Agenda Item No. 2 was taken off of the consent calendar for the City Attorney to discuss conflict of interest and due to an additional special condition that staff added.

Chair Nitafan also mentioned that he would not be abstaining on this project, and asked Attorney Kit Faubion to clarify this for the public.

Kit Faubion, City Attorney, indicated that she has had consultations with Chair Nitafan and Commissioner Giordano, real estate professionals, with conflict of interest issues. The Commission has received memos in the past with respect to decisions from the Fair Political Practices Commission (FPPC). In early 1999, the FPPC advised of a restrictive opinion for decision-makers called the Teasley opinion, which left very little latitude for participation. Later in 1999, another opinion issued by the FPPC called the John Pena opinion, loosened up restrictions from the Teasley opinion. The Teasley opinion was more restrictive for larger projects while the Pena opinion was more practical advice for smaller and medium-sized projects.

Ms. Faubion also mentioned that two phone conversations took place to the FPPC hotline asking that a verbal opinion be received. The FPPC indicated that there appeared not to be a conflict of interest with Chair Nitafan and Commissioner Giordano voting on the Housing Element.

Commissioner Hay mentioned how every Commissioner has been confronted with the Teasley opinion at one point or another such as the Midtown Plan, evolving conflict of interest rule, and FPPC evaluation. He also commented that the Teasley opinion has loosened up somewhat from the Pena opinion. The Pena opinion is more reasonable in terms of what "forever" means, such as advising real estate professionals, and basically acknowledging that it is their decision to make.

Commissioner Hay requested clarification that if a real estate

professional was to vote on a project, would he/she be prohibited in buying or selling that project forever, and if

someone has a conflict of interest beyond real estate and votes on a project, could the vote and the project be later invalidated.

Attorney Faubion stated there are two liabilities when it comes to conflict of interest issues. The first is personal liability to the affected decision-maker, the advice of the City Attorney cannot protect the decision-maker from the liability, only a formal opinion from the FPPC. The other concern is that if a decision has been made, there is a potential that it can be invalidated if the decision-maker was involved.

Chair Nitafan asked staff to make their remarks noting that a presentation was not needed.

Annelise Judd, Assistant Planner, referenced the added condition No. 11 which reads as follows:

Prior to permit issuance for the front yard fence and entry gate, the applicant shall submit for Planning Commission Subcommittee review revised plans for the entry gate. Overall height of the fence, gate and support columns shall not exceed 54 inches (MMC XI-1-.54.11).

After a question from Commissioner Hay, Ms. Judd indicated that the applicant did not have any issues with the condition.

Commissioner Giordano asked if there is a time limit for installing the landscaping.

Ms. Judd responded that generally landscaping for hillside parcels should be installed and put into place prior to a certificate of occupancy being issued for the home. In some cases, if the applicant wishes to defer landscaping, the Building Department has allowed this. They will take a bond for the cost of the landscaping installations, which is held until the landscaping is installed.

Commissioner Giordano asked if there have been problems with bonds being forfeited.

Ms. Heyden responded that it has not been a problem because performance deposits are cash.

Commissioner Giordano commented that the entryway gates to Summitpointe and Calero Creek Heights are similar, and that the proposed home has a beautifully designed gate but it doesn't blend with the scheme with the other two structures.

Commissioner Giordano also expressed concerned about neglected landscaping along Country Club Drive and asked if staff was aware of this.

Ms. Judd replied that Carol Randisi, Supervisor of Public Works could be contacted for any landscaping concerns as she was not

aware of this.

Commissioner Hay suggested that Commissioner Giordano's earlier comment regarding the gates be clarified, and that the gated property should be consistent with the other properties.

Ms. Judd indicated that staff did not look at surrounding gate design.

Commissioner Giordano stated that she would like staff to come back with a study of the gates in the area.

Ms. Heyden suggested that since this particular gate/fence needs to be redesigned to lower the height, the gate design could come back to the Subcommittee prior to plan check review. This would revise Condition No. 11.

Commissioner Giordano asked if there is consensus among the Planning Commissioners to address landscaping issues along Country Club Drive.

Commissioner Hay commented that this was not the proper time in the discussion for debate.

Chair Nitafan opened the public hearing on Agenda Item No. 2.

Dave Richerson, 1920 Yosemite Drive, expressed concern that the proposed variance is going outside of established design guidelines and ordinances, especially on the hillside. Slopes in excess of 40% are associated with dangers such as erosion, runoff, and possible landslide conditions. The variance needs to be strongly looked at and the property owner should be liable for any irreversible damage to the hillside.

**Close Public
Hearing** Agenda
Item No. 2

Motion to close the public hearing.

M/S: Hay/Williams

AYES: 6

NOES: 0

Commissioner Hay complimented the architect on the beautiful design and mentioned that he is strongly supportive of hillside variance protection, but is secure with the findings of the proposed project.

Chair Nitafan needed clarification of erosion problems and liability.

Ms. Judd responded that she has not encountered this question before with a hillside variance.

Chair Nitafan commented that he has no problems with the variance if it is properly designed to combat erosion problems.

Ms. Judd pointed out that the engineer who designed the grading and the driveway, made sure that the graded slopes would be anchored with the appropriate soil, erosion protective measures, and the long-term ground coverings and landscaping. The applicant would be relying on the geo-technical report that the engineer has prepared. The report gives specific recommendations for the grading and the construction of the driveway and the home.

Commissioner Galang asked why the applicant chose a one-story building instead of two-stories.

Ms. Judd responded that the applicant had no choice due to the hillside ordinance lot that is on the west side of the crest line. The hillside ordinance specifies a single-story home not to exceed 17ft.

Commissioner Galang asked how far is the residence from the Summitpointe gate.

Ms. Judd responded about "several hundred feet".

Ms. Judd noted a correction from the recommendation in the staff report which should read as follows:

Close the public hearing, approve the variance, and recommend to the city council to approve the hillside site and architectural review approving subject to the findings and recommendations.

Motion to approve variance and recommend approval to Council of the Hillside Site and Architectural Review subject to findings and conditions in the report and to add new Condition No. 11 with the change that the gate and fence redesign come back to the Subcommittee prior to permit review and issuance.

M/S: Hay/Williams

AYES: 6

NOES: 0

**4. Midtown
Specific Plan,
Chapter 8
(SP2002-1) &**

Chair Nitafan and Commissioner Giordano announced that they would be abstaining on this item. Chair Nitafan handed the gavel to Vice Chair Sandhu.

**Zoning Ordinance
Text (ZT2002-1)
and Map
Amendment
(ZC2002-1) (City
of Milpitas)**

Vice Chair Sandhu opened the public hearing on Agenda Item No. 4.

Anu Natarajan, EDAW Consultant, presented the Chapter 8, Design Guidelines and Development Standards, and **Marina Rush, Associate Planner**, presented the zoning ordinance text amendment and map amendment.

Commissioner Williams asked whether Campbell's Corner's late hours would be nonconforming due to the Midtown Specific Plan.

Ms. Rush responded that because the Planning Commission has already approved the project, it would be grandfathered. Also, the project would not need to obtain a use permit and would be considered legal nonconforming.

Commissioner Williams commented that Appian Design Engineering has an unusual property outline with PG & E restrictions. As far as access, it brings a very good point of permanency, design, and utilization of the property. He doesn't foresee any problems.

Commissioner Hay complimented the concept of concealing the backflow preventers and asked if in the pipeline projects would be allowed to move forward.

Ms. Heyden responded "yes" and that there are about five such projects.

Valerie Barone, Planning, Recreation, and Neighborhood Services Director, commented that the projects that have already been approved are protected under development laws, as long as they keep their project moving forward. Campbell's Corner has actually met all of their deadlines and Appian Engineering will not be affected as long as they meet regulations.

Commissioner Hay asked how the City of Milpitas plans on encouraging developers, the public, landowners, and stakeholders to move forward.

Ms. Rush responded that there is a very strong commitment from the City. Chapter 7 in the Plan is the implementation chapter and outlines how to make sure the plan is successful. Chapter 7 includes infrastructure improvements which include relocating the bike lane from Main Street to Able Street, adding a bike route, reconstructing Main Street, and reconstructing sewer, water, and storm drains.

Commissioner Galang asked if the white color lighting will be the same on Main Street or will it be removed.

Ms. Rush responded that currently streetlights on Main Street are white, but might be changed through streetscape improvements and will be more pedestrian-oriented to provide safety for the area.

Vice Chair Sandhu asked the difference between building setbacks, which are 5 ft. by 5ft. on the sidewalk, and 10 ft. wide by 10ft.

Ms. Rush mentioned that the purpose is to provide a traditional Main Street look and have the sidewalks widened for pedestrian use.

In response to Vice Chair Sandhu's questions regarding the May 2002 implementation date, Ms. Rush responded that if the City Council does not approve the Midtown Plan on March 19, 2002, the implementation date will be moved out.

Vice Chair Sandhu opened the public hearing on Agenda Item No. 4

Dan Peeples, Owner of 529 South Main Street, complimented the plan and expressed concerns with the existing small lots and how they will be able to meet the parking and setback requirements. In the mixed-use area, he felt that the plan was not flexible enough regarding design.

John Jay, 542 South Main Street, stated that his boat business will be negatively affected by the Midtown Plan and will be expected to move due to conflicts with pedestrians.

Sylvia Leung, 678 Cypress Drive, has a small lot in the Mixed TOD overlay area and will not be able to meet the parking requirements if developed as per the minimum density requirement proposed. She requested that compact cars be given credit and that parking be shared by different uses with different parking hour demands. She also pointed out an error in the matrix on page 8-16, regarding density.

George Donovan, PO Box 11100 Oakland, has an interest in the Serra Shopping Center and represents the owner of a small parcel on Great Mall Parkway. He endorses the plan in general, but is concerned with the park requirement for multi-family residential, which makes it difficult to meet the plan's goals. He also expressed concern with the Redevelopment Agency's eminent domain powers even though they have expressed that it is not their intent to use them.

Norm LaCroix, 1321 North Hillview Drive, represents two property owners interested in the redevelopment of their property. His concerns are the requirements for coordinated design for specific projects, side setbacks, roof design, tinted glazing, parking in the mixed-use district, and the need for use permits for approval of all proposals.

Bob Olinger, 89 South Main Street, feels that additional approvals are not necessary and that he was contracted on two properties with developers that are ready to move ahead. Time is of the essence with these projects that are planning on federal dollar assistance. He also felt that the City is going to need to build a parking structure to help owners redevelop their properties.

Dave Richerson, 1920 Yosemite Drive, thanked Ms. Rush for all her work on the Midtown Specific Plan and commented that he is very excited about the whole process. Agrees that lot consolidations are going to have to happen and will take a natural course of development, but feels incentives are needed. He also referenced the Sunnyvale area, and mentioned how there is construction going on that similarly resembles Main Street.

**Close Public
Hearing** Agenda
Item No. 4

Motion to close the public hearing.

M/S: Galang/Hay

AYES: 6

NOES: 0

RECESS

Vice Chair Sandhu called a ten-minute recess until 9:30 p.m.

Vice Chair Sandhu asked staff to respond to public comments raised.

Ms. Rush stated that the Midtown project includes a great deal of flexibility through the use permit process. Regarding aggregation, the precise plan process is required and is done in cities like Mountain View and San Jose, and gives the Planning Commissioner an opportunity to see how an application and proposal could encourage parcel assembly.

Commissioner Galang asked what type of parking is proposed on Main Street.

Ms. Rush replied that there will be parallel parking on both sides. 230 stalls will become available.

Commissioner Williams reiterated that the intent of the Plan was not to push out businesses.

In response to Commissioner Hay's question regarding parkland requirements, Ms. Rush said the Midtown standard is a reduction of the City's current requirements and explained the variety of ways that the requirements could be met off-site, not impacting the development potential on-site.

Commissioner Hay referenced Mrs. Leung's compact parking question raised earlier, and wondered whether she considered on-street parking.

Ms. Rush didn't know the answer.

Commissioner Hay asked what Mr. Jay meant by his tax base relocation question and Ms. Rush did not know the answer.

Commissioner Hay referenced Mr. Olinger's City-provided parking comment and felt this will be eventually needed.

Vice Chair Sandhu recognized George Donovan again.

Mr. Donovan stated that the Crossings at Montague density is only 30 units per acre and that the TOD overlay requires 41 units per acre which is a big difference.

Steve Burkey, Associate Planner, pointed out that the Crossings at Montague is a recent project that has a 30% open space requirement that Midtown will have. Also, the greater Midtown density generates higher revenue to offset parking requirements.

Vice Chair Sandhu recognized staff and everyone who participated in the Plan that will enhance the quality of life.

Commissioner Hay mentioned that this is a collective vision that has taken a lot of work by many stakeholders. He specifically recognized the 2-year involvement of the Subcommittee.

Motion to recommend approval to City Council of the Development Standards and Design Guidelines as amended and the Zoning Ordinances map and text amendments as amended, as well as establishing that only those projects that have received Planning Commission approval or are deemed complete in writing by staff shall be vested from the requirements and guidelines of the Plan and its implementation documents once effective.

M/S: Hay/Williams

AYES: 6

NOES: 0

X. ADJOURNMENT There being no further business, the meeting was adjourned at 9:55 p.m. to the next regular meeting of March 13, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

March 13, 2002

**I. PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

II. ROLL CALL

Present: Nitafan, Sandhu, Galang, Giordano, Hay, Williams
Absent:
Staff: Faubion, Fujimoto, Heyden, Oliva

**III. OATH OF
OFFICE FOR NEW
COMMISSIONER:
*Deepka Lalwani***

Gail Blalock, City Clerk, swore in Deepka Lalwani as a member of the Planning Commission. Commissioner Lalwani then took her place along the Commissioners to become part of the voting body for the agenda items.

**IV. PUBLIC
FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**V. APPROVAL OF
MINUTES *February
27, 2002***

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of February 27, 2002.

Commissioner Hay referenced Page 5, paragraph 4, and made the following change to the last sentence:

Attorney Faubion stated there are two liabilities when it comes to conflict of interest issues. The first is personal liability to the affected decision-maker, the advice of the City Attorney cannot protect the decision-maker from the liability, only a formal opinion from the FPPC. The other concern is that if a decision has been made, there is a potential that it can be invalidated if the decision-maker was involved.

Commissioner Giordano requested that the following language be included on Page 5:

Ms. Faubion also mentioned that two phone conversations took place to the FPPC hotline asking that a verbal opinion be received. The FPPC indicated that there appeared not to be a conflict of interest with Chair Nitafan and Commissioner Giordano voting on the hillside project.

Commissioner Giordano asked staff if they had contacted Carol Randisi in Public Works regarding neglected landscaping on

Country Club Drive.

Tambri Heyden, Planning Manager, responded that Ms. Randisi had been contacted but that the information is not yet read to pass on.

Motion to approve the minutes of February 27, 2002 with the corrective changes.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

ABSENTIONS: 1 (Lalwani-not present at the last meeting)

VI. ANNOUNCEMENTS

Commissioner Giordano mentioned the City of San Jose Paint grant program and asked staff to follow up and see if it applies to the City of Milpitas.

Commissioner Lalwani announced that the Milpitas Chamber of Commerce is hosting the Mayor's State of the City address on Thursday, March 21, 2002 at the Crown Sterling Suites during lunchtime. All are welcomed to attend.

Commissioner Hay announced that the Milpitas Foundation for Education, in conjunction with the City, will be receiving a grant in the amount of \$37,000 from the Traffic Safe Community Networks in Santa Clara County for child and adult safety and bicycle safety. He thanked Arlene DeLeon, City Traffic Engineer, Patricia Dixon, Council Member, Anell Spencer, Board of Education member and Althea Polanski, Treasurer of the Board of Education, who worked on and submitted the proposal.

Chair Nitafan announced that the Knights of Columbus will be hosting the 28th Annual Awards Dinner for City of Milpitas' Citizen of the Year for Niranjana Gupta, Police Officer of the Year for Dennis Kraft, and Firefighter of the Year for Don Yamashita on Saturday, March 16, 2002 at the Milpitas Community Center. All citizens of Milpitas are encouraged to attend. Tickets are \$20.00 per person for a buffet dinner.

VII. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

Ms. Heyden noted that she had received a request from the Great Mall to continue Agenda Item No. 4 to the March 27, 2002 Planning Commission meeting due to needing additional time to evaluate the financial impact of one of the conditions of approval.

Motion to approve the agenda with the change indicated above.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

VIII. CONSENT CALENDAR

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

Commissioner Hay added Agenda Item No. 4 to the consent calendar since the applicant has requested continuance, and since this is a public hearing item, the hearing will be continued as well.

Chair Nitafan opened the public hearing on Consent Item Nos. 1, 2, 3, and 4.

There were no speakers from the audience.

Motion to close the public hearing on Item Nos. 1 and 2 continue Item Nos. 3 and 4 to continue to the March 27, 2002 Planning Commission meeting.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar which includes project approval for Item Nos. 1, 2, and 5 with staff recommendation and special conditions noted in the staff report as follows:

***1 TENTATIVE MAP (P-TM2002-1) & USE PERMIT (P-UP2002-9):** A request to subdivide 65± acres located on the west side of North McCarthy Boulevard into five lots (Lands of Veritas; APN: 22-24-055) and to allow the parking required for three of the proposed lots to be on an adjacent fourth proposed lot. Applicant: Veritas Software. Project Planner: Steve Burkey, 586-3275. (Recommendation: Approval with Conditions)

***2 SITE AND ARCHITECTURAL REVIEW AMENDMENT (P-SA-2002-8):** A request to enclose a deck of hillside home and convert to a family room at 514 Vista Spring Court (APN: 42-30-018). Applicant: Ed Kandefer. Project Planner: Staci Pereira, 586-3278. (Recommendation: Approval with Conditions)

***3 "S" ZONE APPLICATION (P-SZ2002-2):** Pedestrian bridge over Berryessa Creek near Gill Park (Paseo Refugio & Santa Rita Drives) and the Town Center Shopping Center. Project site: Santa Clara Valley Water District property (APN 28-12-2). Project Planner: Annelise Judd, 586-3273. (Recommendation: Continue to March 27, 2002)

***4 USE PERMIT AMENDMENT NO. (P-UA2002-4):** Review of parking supply/demand study required by Use Permit No. 1166 (Parking Reduction) and amendment of previous

conditions for the Great Mall of the Bay Area (APN 086-24-055). Applicant: Swerdlow Real Estate Group Inc. Project Planner: Joe Oliva, 596-3290. (Recommendation: Continue to March 27, 2002)

***5 "S" ZONE AMENDMENT (P-SA2002-15):** Request to change exterior light poles and wattage at a Burger Restaurant at 1475 S. Dempsey Road (APN: 088-35-015). Applicant: Sunny Ghai. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)

M/S: Hay/Sandhu

AYES: 7

NOES: 0

**IX.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:30 p.m. to the next regular meeting of March 27, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

March 27, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Sandhu, Giordano, Hay, Lalwani, Williams

Absent: Galang

Staff: Faubion, Guido, Heyden, Judd, Oliva, Pereira

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting. There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES**

March 13, 2002

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of March 13, 2002.

Commissioner Giordano made a correction under the February 27, 2002 minutes to read the following:

Ms. Faubion also mentioned that two phone conversations took place to the FPPC hotline asking that a verbal opinion be received. The FPPC indicated that there appeared not to be a conflict of interest with Chair Nitafan and Commissioner Giordano voting on the hillside project.

Commissioner Hay also made a correction to the March 13, 2002 minutes to read the following:

Commissioner Hay announced that the Milpitas Foundation for Education, in conjunction with the City, will be receiving a grant in the amount of \$37,000 from the Traffic Safe Community Networks in Santa Clara County for child and adult safety and bicycle safety. He thanked Arlene DeLeon, City Traffic Engineer, Patricia Dixon, Council member, Annell Spencer, Board of Education member and Althea Polanski, Treasurer of the Board of Education, who worked on and submitted the proposal.

Motion to approve the minutes of March 13, 2002 with the corrective changes.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Commissioner Giordano thanked staff for coordinating the effort to have her and Commissioner Hay attend the Planners Institute in Monterey last week. Two

interesting topics that were brought up were affordable housing and mixed-use. Very proud that the City has the Midtown Specific Plan in place.

Vice Chair Sandhu invited all residents to attend a Community breakfast sponsored by the Sikh foundation, which will be held on Sunday, April 7, 2002 at Sunnyhills Methodist Church from 7:00 a.m. to 8:30 a.m.

On behalf of the Milpitas Chamber of Commerce, **Commissioner Lalwani** thanked all those that attended the Mayor State of the City address. It was a successful event that completely sold out.

In response to an unidentified person from the audience, **Tambri Heyden, Planning Manager**, explained that mixed-use describes projects that are a combination of commercial and residential that are integrated either vertically, one on top of each other in terms of floors, or horizontally, in terms of different uses sharing the same site.

Chair Nitafan thanked the citizens of Milpitas who attended the Citizen of the Year dinner. It was a very successful event.

VI. PRESENTATION

Chair Nitafan presented a plaque to former Commissioner Evelyn Chua for her three years of service to the City as a Planning Commissioner.

Ms. Chua thanked Council members and the Planning Commissioners for her appointment, and noted what a pleasure it was to serve on the Commission.

Chair Nitafan called a recess at 7:15 p.m. for all to enjoy refreshments in Evelyn Chua's honor.

VII. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda. Commissioner Hay recommended that Agenda Item No. 4 and 2 be switched.

Motion to approve the agenda as amended with the change indicated above.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

VIII. CONSENT CALENDAR

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

Ms. Heyden requested that Agenda Item No. 10 be added to the consent calendar.

Commissioner Hay added Agenda Item No. 9 to the consent calendar.

Chair Nitafan opened the public hearing on Agenda Item Nos. 1, 5, 6, 7, 8, 9, and 10.

There were no speakers from the audience.

Motion to close the public hearing on Item Nos. 5, 6, 8, and 9 only.

M/S: Hay/Giordano
AYES: 6
NOES: 0

Motion to approve the consent calendar, which includes project approval for Agenda Item Nos. 1, 5, 6, 7, 8, 9, and 10 with staff recommendation and special conditions, noting that Agenda Item Nos. 1, 7, and 10 will be continued to the April 10, 2002 Planning Commission meeting.

***1 USE PERMIT (NO. 1167.18) AMENDMENT NO.**

P-UA2002-2: Request for approval of an approximate 4,700 square-foot expansion for additional gaming area and meeting rooms at Dave and Busters within the Great Mall of the Bay Area at 1100 South Main Street (APN: 086-24-055). Applicant: Dave and Busters Inc. Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Continue to April 10, 2002 Planning Commission Meeting)*

***5 USE PERMIT NO. P-UP2002-11 & HILLSIDE SITE & ARCHITECTURAL REVIEW (P-SZ2002-4):**

Proposed water storage tank for Spring Valley Heights hillside subdivision. Location: Common area at southwest end of subdivision (APN 42-30-26). Applicant: Spring Valley Heights Mutual Water Co. Project Planner: Annelise Judd, 586-3273. *(Recommendation: Approval with conditions)*

***6 USE PERMIT (NO. 795) AMENDMENT NO. P-**

UA2002-3: Request to add karaoke and extend hours of operation and beer and wine sales to restaurant at 52 S. Abel Street. (APN 22-24-045). Applicant: Thai Taste. Project Planner: Staci Pereira, 586-3278. *(Recommendation: Approval with conditions)*

***7 USE PERMIT NO. P-UP2002-8:** Request for approval of a large family day care home for 12 children in a residential district at 1486 Glacier Drive. (APN: 088-30-090). Applicant: Naty's Playhouse c/o Elena Mena. Project Planner: Frank Guido, 586-3284. *(Recommendation: Continue to April 10, 2002 Planning Commission Meeting)*

***8 USE PERMIT NO. P-UP2002-7:** Request for approval of a new restaurant serving beer and wine with 106 seats (66 indoors and 40 outdoors) at a 2,980 square foot space in an existing building, and a parking requirement reduction of 36 parking stalls, at 179 Ranch Drive in the McCarthy Ranch Marketplace. (APN: 022-53-002). Applicant: Yan Can Wok c/o Tecta Associates. Project Planner: Frank Guido, 586-3284. *(Recommendation: Approval with conditions)*

***9 USE PERMIT NO. P-UP2002-6:** Request to permit an addition to a legally nonconforming building and to exceed the Heavy Industrial ("M2") District's 40% Floor Area Ratio (FAR) limit, with installation of 6,535 square feet of modular mezzanine storage space, which would increase the building's FAR from the existing 49.4% to

51.3%, at 881 Wrigley Way. (APN: 086-29-055).
Applicant: Bizcom c/o Bay Area Shelving. Project
Planner: Frank Guido, 586-3284. (*Recommendation:
Approval with conditions*)

***10 USE PERMIT (NO. 1166) AMENDMENT NO. P-UA2002-4:** *Continued from March 13, 2002 Planning Commission Meeting.* Review of parking supply/demand study required by Use Permit No. 1166 (Parking Reduction) and amendment of previous conditions for the Great Mall of the Bay Area (APN 086-24-055).
Applicant: Swerdlow Real Estate Group Inc. Project
Planner: Joe Oliva, 596-3290. (*Recommendation:
Continue to April 10, 2002 Planning Commission Meeting*)

M/S: Hay/Giordano
AYES: 6
NOES: 0

**IX.
PUBLIC HEARING**

**1.
USE PERMIT (NO.
680.27)-AMENDMENT
NO. P-UA2002-6: (A
Touch of Aloha
Restaurant)**

Chair Nitafan opened the public hearing on Agenda Item No. 4.

Annelise Judd, Assistant Planner, presented a 6-month follow-up review regarding expansion from sales of beer & wine to sales of all types of alcoholic beverages, plus addition of live entertainment at A Touch of Aloha Restaurant, located at 148 N. Milpitas Blvd, and recommended that the Commission note receipt and file the 6-month review.

Ms. Judd mentioned that since the September 26, 2001 Planning Commission meeting, staff has received three communication e-mails from a Beresford Village resident. Concerns cited were music and noise emanating from the restaurant on Saturday after 9:00 p.m., noise volume increasing as patrons walk in and out from the front door, and loud talking and laughing in the parking lot. Ms. Judd clarified that the applicant gave out his phone number to nearby residents to call in case of any noise disturbances.

Commissioner Hay asked when did the live entertainment begin.

Ms. Judd replied that the applicant has had karaoke for several years, but just added live entertainment in March 2002.

Vice Chair Sandhu asked if the three e-mail messages were sent recently.

Ms. Judd responded "yes", and that the e-mails have no connection with the 6-month public hearing review.

Commissioner Giordano questioned whether there were other complaints registered with the police department, because residents might not know to contact the owner directly.

Ms. Judd responded that if there are complaints, residents could call code enforcement or the police department. The restaurant owner did contact the police

and no complaints were found.

Commissioner Lalwani asked if the concerned resident has met with the owner.

Ms. Judd responded "no", but that she did speak on the phone with the individual.

Applicant Richard Nashiro, mentioned how he made himself available to the residents and that if there were any problems, they could call him directly. He also recalled how a resident had complained about an early delivery truck and that the problem was solved the very next day.

Commissioner Hay asked the applicant to explain the difference between the previous entertainment and the one beginning in March.

Mr. Nashiro responded that there is no difference.

Chair Nitafan opened the public hearing

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Giordano/Hay
AYES: 6
NOES: 0

Before making a motion, Commissioner Giordano asked if staff could check police records to make sure no complaints were filed.

Commissioner Hay clarified that the Item would have to be continued for 30 days in order for staff to report back.

Kit Faubion, City Attorney, clarified that another option would be to note receipt and file the 6-month review, but that staff could report on the police record findings to the Planning Commission.

Motion to approve Use Permit No. (680.27)-Amendment No. (P-UA2002-6) with staff recommendation of note receipt and file, and for staff to report back to the Planning Commission on police record findings.

M/S: Giordano/Sandhu
AYES: 6
NOES: 0

**2.
BART EXTENSION TO
MILPITAS, SAN JOSE
AND SANTA CLARA:**
(Staff Contact: Joe Oliva)

Chair Nitafan opened the public hearing on Agenda Item No. 2.

Joe Oliva, Principal Transportation Planner, presented a PowerPoint presentation on the BART project to discuss the following topics: (a) Preferred location for a second optional BART station in Milpitas; and (b) Preferred design for the BART/Montague crossing, and recommended to Council the South

Calaveras optional station site and a trench under Montague Expressway for BART.

Mr. Oliva also recognized City staff members participating in BART committees: Arlene DeLeon, Traffic Engineer, Mike McNeely, City Engineer, Steve Burkey, Associate Planner, Janice Nadal, Junior Transportation Planner and Councilman Jim Lawson, head of the Transportation Subcommittee.

Councilman Jim Lawson, head of the Transportation Subcommittee, wanted to commend staff on presenting the complex project, and announced that this is the beginning of the largest public project ever within the City of Milpitas limits. The total cost of the BART project from Warm Springs to Santa Clara County is \$3 billion dollars. VTA will be performing construction on BART and light rail. Both Santa Clara County and Alameda County will be making policy decisions on construction. After construction is completed, the project will then be turned over to BART who is expected to pay \$60 to \$70 million dollars of operating costs.

Councilman Lawson explained how BART's major investment study and the environmental portion of the design will impact the City, and that the Planning Commission's decision on the design will be very valuable in the implementation process. VTA operations are based upon sales tax revenue, and currently, sales tax has decreased by 20% in Santa Clara County. There is \$800 million dollars currently needed from the government, but there is not enough money to finish the project.

There are different optional stations proposed in Milpitas, using creative designs such as a mixed-use, mixed-residential or a combination of both and hotel developments. Different locations proposed are South Calaveras and Montague Expressway. The South Calaveras station would be in concert with the Community Center and would be a great opportunity. In terms of the location at the Crossings at Montague, it would be a more complex structure. The BART design would not interfere with the Union Pacific railroad track.

Commissioner Hay asked if the Transportation Subcommittee had a recommended preference, and if Councilman Lawson had a personal preference.

Councilman Lawson responded that the Transportation Subcommittee preferred the South Calaveras station, but based on his experience, he would argue for either one.

Commissioner Williams referenced the Union Pacific Railroad tracks, and asked if there would be a problem if the BART extension went below grade, and if the light rail went above grade.

Councilman Lawson responded that a trench is recommended to go below grade to run the Pacific

railroad, and that the light rail will be above grade.

Commissioner Lalwani questioned how many parking spaces would be needed at the proposed BART stations.

Councilman Lawson replied that BART has a free parking policy, but he believes that since the station will be in a dense urban area, there should be limited parking and parking should be paid for. The proposed parking would also be pedestrian friendly.

Commissioner Lalwani commented that since Fremont parking is free, residents might find this as an incentive, and decide to use Fremont BART instead.

Councilman Lawson replied that Milpitas BART would be more of a convenience factor in regards to time, gas, and wear and tear on people's cars. Also, finding a parking space at the Fremont BART station is nearly impossible.

Commissioner Lalwani also asked if seniors in the area were fully informed, and if their choices were being taken into consideration.

Councilman Lawson replied that the BART project has been widely advertised and that the South Calaveras station is in convenient walking distance for seniors.

In response to Vice Chair Sandhu's question regarding what Milpitas citizens could do about BART, Councilman Lawson replied that the community has to be united and relay to the Silicon Valley Advisory Policy Board, which oversees BART construction, and the VTA, their options when it comes time to make recommendations.

Vice Chair Sandhu asked how many jobs would be created in the construction area, and Councilman Lawson replied that he did not know the answer.

Chair Nitafan asked if the South Calaveras station would be connected with Los Coches, and Councilman Lawson responded "yes".

Chair Nitafan commented that the \$1 million dollar I-680 and I-880 Calaveras study was very instrumental with the project and asked how far along it has come.

Councilman Lawson replied that the study is complete but that decisions have not been made.

In response to Chair Nitafan regarding the Montague station, Councilman Lawson replied that an open trench tunnel would be built under ground after Trade Zone Boulevard, which is similar to the light rail on First Street in San Jose.

Chair Nitafan opened the public hearing.

Rob Means, 1421 Yellowstone, would prefer a BART station at Dixon Road, but questions the need for another station. He supports alternative technology-

personal rapid transit-called a feeder system.

Mary Tantillo, 158 Sandburg Drive, favors a station on Abel Street because a second station that is 1.6 miles from Montague Expressway would most likely not be funded.

Atul Balubia, resident, asked how many riders would be added to a second station and doesn't believe there are more than 10,000 residents near either one of the optional stations. He doesn't believe a second station should be added.

Josephine Hos, resident, is unclear as to which stations would be completed first, and needs clarification as to what above and below grade means. Stated her neighborhood would be negatively impacted by the Calaveras station due to noise and proximity.

Charlie Mitchell, (representing three homeowner associations of 500 residents), stated that so far, 40 homeowners are against the Calaveras station.

Lou Fong, Beresford resident, felt that the Calaveras station would extend problems into the neighborhood, causing more traffic and parking problems.

Mary Jane Quitalig, 134 Millwater Court, stated her home would be disrupted by the Calaveras station and preferred the Abel Street site.

Stephanie Santos, 58 Edgewater Drive, is also against the Calaveras station. She currently lives close to the soundwall and is concerned about more noise and safety.

Charndra Singh, 67 Stonehedge Court, is concerned about more noise and traffic congestion at the Calaveras station and felt that the Montague station is adequate.

Harry To, resident, is concerned about future noise from BART. The existing soundwall is not high enough and needs to be raised.

Christine Borney, 1149 North Abbott, felt that the Calaveras station would negatively impact her neighborhood.

William Connor, 1515 N. Milpitas Blvd., is in favor of the Calaveras station so long as there is enough parking. He also discussed at grade versus below grade design options.

Close Public Hearing
Agenda Item No. 2

Motion to close the public hearing on Agenda Item No. 2.

M/S: Hay/Williams

AYES: 6

NOES: 0

Chair Nitafan asked Mr. Oliva and Councilman Lawson to address residents' concerns on why an additional station is needed.

Mr. Oliva replied that VTA is currently studying ridership with an optional station. The major investment study states that there is a great demand for BART and optional stations. Preliminary findings show that it would be a 33% increase.

Chair Nitafan asked Councilman Lawson to explain below grade and above grade.

Councilman Lawson explained that below grade is constructed below the level of the surface. For example, a roadway or a railroad. Above grade is the complete opposite, which is building a railroad above level, such as the elevated light rail.

Chair Nitafan asked Mr. Oliva to address concerns of environmental impacts, noise and abatement issues.

Mr. Oliva explained that staff provided a letter to VTA regarding noise and vibration issues, and that the issues will be addressed in the Environmental Impact Report (EIR), as well as traffic, security, and hazardous materials.

Chair Nitafan asked Mr. Oliva and Councilman Lawson to address safety and traffic concerns.

Mr. Oliva responded that VTA would be addressing those issues in the EIR, both relatively midterm and long term with the project.

Councilman Lawson commented that BART is a closed system and that a paying customer would have to go through security to gain access. Barriers would be put up due to the high voltage electric rail.

Chair Nitafan asked Mr. Oliva and Councilman Lawson to address parking problems.

Mr. Oliva mentioned that those concerns would be addressed in the EIR report, but that the main reason an optional station is recommended is so parking could be spread out among different sites, rather than concentrated in one site.

Chair Nitafan asked Councilman Lawson to address senior accessibility from light rail to BART.

Councilman Lawson replied that these issues would be addressed through the design and environmental phase of the project.

In response to Chair Nitafan regarding voting priority, Councilman Lawson suggested that it would be helpful to decide on one station.

In response to an unidentified person from the audience, Councilman Lawson commented that the City is not be paying for the \$180 million dollar BART project.

Commissioner Williams needed clarification on the ratio of noise level between BART's electrified trains versus

the Union Pacific diesel noise.

Councilman Lawson replied that there is an enormous difference between an electric BART train on a controlled track versus a diesel train.

Commissioner Lalwani commented about the 87,000 riders from Fremont to Milpitas, and the 10,000 riders in Milpitas, and asked if the data was part of a scientific study.

Councilman Lawson replied that a more precise number will be defined in the EIR report but in general, more stations attract more riders.

Commissioner Hay read aloud a City staff letter addressed to VTA that included twenty issues pertaining to environmental concerns such as traffic and circulation, utilities, flooding, natural resources, aesthetics, land use planning, noise, vibration and public health and safety. He complimented staff on the comprehensiveness of the letter.

Commissioner Lalwani made a motion to recommend to Council to not have a second station and to approve the trench design for BART under Montague. She felt that there is not enough information on the South Calaveras station, and that a second study is needed.

The motion was not seconded.

Motion to recommend to Council the South Calaveras site as an optional station with no priority recommendations, and to select the BART trench design under Montague Expressway.

M/S: Hay/Williams

AYES: 5

NOES: 1 (Lalwani)

Commissioner Lalwani noted that she supported the trench design, but not the South Calaveras site.

RECESS

Chair Nitafan called a five-minute recess at 9:15 p.m.

3.

"S" ZONE

APPLICATION (P-SZ2002-2): *(Berryessa Creek, Santa Clara Valley Water District)*

Annelise Judd, Assistant Planner, and Gail Seeds, Project Manager, invited public comments regarding the proposed Berryessa Creek Trail, Reach 3, and pedestrian bridge. Reach 3 of the trail extends from North Hillview Drive to the Abel Street overpass near North Milpitas Boulevard. The pedestrian bridge over Berryessa Creek is proposed near Gill Park and the Town Center shopping center. Recommendation is to take public comments and continue to an uncertain date.

Ms. Judd also mentioned e-mail communications from residents regarding privacy and access concerns.

Commissioner Giordano asked who would be responsible for trail maintenance and Ms. Judd responded that the City would be responsible.

Commissioner Hay mentioned that since he lives in the neighborhood, he contacted legal staff to determine his eligibility to act on this application, and his property is located just outside the required radius. He also asked the amount of the federal grant.

Ms. Judd responded that the grant is \$375,000.

Commissioner Hay referenced the following information from the staff report:

The Trails Master Plan identified the Berryessa and Coyote Creek Trails as top priority trails for implementation. Prioritizing criteria included quality of recreation, quality of transportation, anticipated level of use, connection to major destinations and residential neighborhoods, and whether the trail would fulfill a park/recreation/open space deficiency.

Commissioner Hay asked what the deficiency is.

Ms. Judd responded that the Trails Master Plan indicates there are no park/recreation/open space facilities within one mile from the Berryessa Creek trail.

Commissioner Hay questioned this, noting that Gill Park is immediately adjacent to the levee trail. He went on to ask how the levee-raising project would affect the pedestrian bridge.

Ms. Judd responded that the bridge could be built at the current levee elevation, and in the future, when the Water District raises the levee, the bridge abutments could be built up and the bridge reattached at the higher level.

In response to Commissioner Hay's question regarding other sources of funding, **Mike McNeely, City Engineer**, replied that the Santa Clara Water District has secure funds to cover costs of the flood protection project.

Commissioner Hay asked if there is a possibility that the Water District will complete the landscaping.

Mr. McNeely responded "yes" and that the Santa Clara Water District is working on that to make the levee more compatible with landscaping.

In response to Chair Nitafan's question regarding construction for the levee raise, Ms. Judd responded that it is anticipated to begin in 2005, but the environmental document has not been prepared. Tonight's meeting is just to gather public comments relating to the City's trail and bridge project, so they could be addressed in the required environmental documentation for the City project. The Berryessa trail and bridge item will come back to the Planning Commission at a later date this year.

Chair Nitafan mentioned his concerns that constructing a levee would be much more expensive.

Mr. McNeely responded that there is \$30 to \$40 million dollars approved for the Berryessa Creek trail project funded by the Santa Clara Valley Water District.

Commissioner Hay asked if there will be access to the trail from Gill Park and Ms. Judd responded "yes".

Chair Nitafan opened the public hearing.

Cindy Toy, 361 Paseo Refugio, agrees that a bridge is needed, and suggested to have an open levee. She also mentioned her concerns that people jump through her backyard as a shortcut to go to Albertson's and Orchard Supply Hardware, which causes liability issues. Ms. Toy also cited privacy issues, as there is currently no landscaping to screen her backyard from views at the levee top.

Andre Pieroforte, Beresford resident, would prefer the trail not be paved since it is harder for runners to use.

Rob Means, 1421 Yellowstone, expressed his preference that the bridge be located at the Hetch Hetchy trail alignment.

Commissioner Hay reiterated Ms. Toy's comments that it is a real problem with the fence, since people are jumping it and have created their own trail. Would like staff to consider landscaping privacy for Cindy Toy.

Motion to continue the public hearing to a date uncertain.

M/S: Hay/Giordano
AYES: 6
NOES: 0

The Commission asked staff to report back, clarifying the park/recreation/open space deficiency.

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:00 p.m. to the next regular meeting of April 10, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

April 10, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Sandhu, Galang, Giordano, Hay, Lalwani, Williams

Absent: None

Staff: Barone, Berg, DeLeon, Faubion, Fujimoto, Guido, Heyden, Oliva, Weisgerber

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES**

March 27, 2002

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of March 27, 2002.

Motion to approve the minutes of March 27, 2002 as submitted.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

ABSENTIONS: 1-Galang (due to absence at the last meeting)

**V.
ANNOUNCEMENTS**

Vice Chair Sandhu referenced a Milpitas Post article and congratulated **Charlie Lawson, Police Chief** and the Police Department for their record in keeping crime nearly the same as 25 years ago. Even though the City's population has doubled, the Police continue to do excellent work so those residents can enjoy a better quality of life.

Commissioner Hay asked if staff could report on the City's current park deficiency at a future Planning Commission meeting and staff agreed.

**VI.
APPROVAL OF**

Chair Nitafan called for approval of the agenda.

AGENDA

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Galang/Lalwani

AYES: 7

NOES: 0

VII. CONSENT CALENDAR

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

Commissioner Lalwani requested that Agenda Item No. 3 be added to the consent calendar and Commissioner Hay, Commissioner Williams, Commissioner Giordano and Chair Nitafan disagreed due to concerns.

Commissioner Williams requested that Agenda Item No. 6 be removed from the consent calendar.

Tambri Heyden, Planning Manager, requested that Agenda Item No. 6 be presented after Agenda Item No. 3 and the Commissioners agreed.

Commissioner Giordano referenced the handouts that staff passed out prior to the meeting and asked if they apply to any of the consent calendar items. **Tambri Heyden, Planning Manager** responded "No".

Chair Nitafan opened the public hearing on Agenda Item Nos. 1 and 2.

There were no speakers from the audience.

Motion to close the public hearing on Agenda Item No. 1 only. Agenda Item No. 2 to be continued to the April 24, 2002 Planning Commission meeting.

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

Motion to approve the consent calendar on Agenda Item No. 1 only as submitted, with staff recommendation and special conditions noted in the staff report, and to continue Agenda Item No. 2 to the April 24, 2002 Planning Commission meeting.

***1 USE PERMIT 1210 AMENDMENT (P-UP2002-14)
– 6 MONTH REVIEW:** Review of the first six months of

on-premises beer sales, approved by Use Permit No. 1210 Amendment, at 235 South Milpitas Boulevard. (APN: 86-039-031). Applicant: Edgie's Billiards. Project Planner: Frank Guido, 586-3284. *(Recommendation: Note receipt and file)*

***2 USE PERMIT NO. (P-UP2002-8):** *(Continued from March 27, 2002)* Request for approval of a large family day care home for 12 children at 1486 Glacier Drive. (APN: 088-30-090). Applicant: Naty's Playhouse c/o Elena Mena. Project Planner: Frank Guido, 586-3284. *(Recommendation: Continue to April 24, 2002)*

M/S: Hay/Giordano

AYES: 7

NOES: 0

In response to Commissioner Giordano's clarifying question on the numerous handouts, Ms. Heyden responded that the packet of information contains two memoranda with revised conditions of approval for the Dave and Buster's project, and the Limelight nightclub, as well as letters from Parc Metropolitan residents concerning the nightclub application and a revised traffic impact analysis from Hexagon Transportation.

Ms. Heyden explained that after the agenda goes out that it is common for staff to receive letters from residents, and that staff will clarify any questions or concerns about the handouts during the presentation.

Chair Nitafan asked if the public could respond in a more timely fashion and Ms. Heyden responded that the public has until the night of the Planning Commission meeting to submit comments and that the majority of them are probably at the hearing.

In response to Commissioner Lalwani's concerns regarding the handouts, Ms. Heyden responded that a short recess could be called if the Commissioners needed time to independently review the handouts.

VIII. PUBLIC HEARING

Chair Nitafan opened the public hearing on Agenda Item No. 3.

1. USE PERMIT NO. (1555): *(Home Depot, 1177 Great Mall Drive)*

Troy Fujimoto, Assistant Planner, presented a six-month review of Home Depot at 1177 Great Mall Drive regarding compatibility issues with nearby residences in regards to noise, loading and unloading of delivery trucks, unscreened outdoor storage, and recommended approval with conditions.

Commissioner Hay recalled how this project came before the Planning Commission, and that they voted unanimously against building Home Depot at the Great Mall, due to management practices at the previous Home Depot store. The City Council over-ruled their decision, and delegated authority to the Planning Commission to ensure that impacts of concern were mitigated. He wanted to make certain that there is not a compatibility problem, and if so, Home Depot has taken all steps to correct the problem.

Commissioner Hay mentioned his disappointment in staff for coming forward to the Planning Commission with this recommendation because Home Depot has not mitigated these measures. Commissioner Hay referenced the staff report which reads the following:

No activity to complete the process has occurred since late January. The applicant states that they are waiting until after this six-month review is completed before they construct the screen wall. Their purpose for waiting is to ensure additional conditions or requirements are not added to the project, which may require major modifications to the screen wall.

He wanted to know how the Planning Commission could evaluate the screen wall before the fact, and if staff's recommendation is to adopt the measures when Home Depot hasn't even completed the work, then the Planning Commission is giving up authority to staff. He also recommended that the six-month review be continued for another six months, after evaluating the measures and addressing the problem.

Commissioner Williams echoed Commissioner Hay's comments and feels that the Home Depot six month review be continued to six months to ensure that all they have committed to do is implemented.

Commissioner Galang wanted clarification on whether the construction of the screen wall will be built around the whole outside storage area.

Mr. Fujimoto responded that the screen wall would be built across the north end loading area.

Commissioner Galang asked if the Parc Metropolitan residents are aware of the construction of the screen wall and Mr. Fujimoto responded "yes".

Ms. Heyden also informed that the task force worked with Home Depot as well as Parc Metropolitan prior to the screen wall coming to the Planning Commission for design review in November 2001. The residents endorsed the design.

Commissioner Lalwani commented that the 650 stall-parking garage is failing to ease out traffic for Home Depot.

Mr. Fujimoto replied that the purpose of the parking garage is to free up parking spaces around other areas of the Mall.

Chair Nitafan commented on the following special condition:

By June 15, 2002, the applicant shall complete construction of the screen wall approved as part of S-Zone Amendment (P-SA2001-74).

He asked what agreement is made to make certain that the screen wall is completed by then.

Mr. Fujimoto replied that Home Depot submitted a letter saying that the screen wall will be completed by the end of the six-month review period, and that the contract is the special condition.

Ms. Heyden commented that Home Depot is currently going through the building permit process.

Chair Nitafan also agreed with Commissioner Hay to have another six month review and referenced the

following from the staff report:

Recently housekeeping issues have resurfaced. Similar to the initial problem, storing deliveries outdoors at the northern end of the building has occurred.

Chair Nitafan commented that storage seems to be an issue and that Home Depot has not complied with the conditions.

Kit Faubion, City Attorney, stated that the Planning Commissioners are getting ahead of themselves because this section of the meeting is for clarifying questions to staff, not the deliberation phase. Comments should be saved until the end of the public hearing, unless the intent is to continue this matter before there's a presentation by staff.

Commissioner Hay asked Ms. Faubion to legally outline the Commissioner's options for the Use Permit, and to explain what actions are available.

Ms. Faubion explained that the public hearing notice on the six-month review for Home Depot entitles the public to come to the meeting and speak. At the close of the public hearing, the Planning Commission could approve, note receipt and file, add another condition, have the ability to continue the item and explain the reasons for the motion, deny or continue the item.

Frank Coda, Greenberg and Farrow Architects, stated that he should take blame, not staff, for not constructing the screen wall. Before spending money on construction, he wanted to make sure that additional items did not come up, and needed some closure from the six-month review. The task force has brought up issues that should be resolved.

Chair opened the public hearing on Agenda Item No. 3.

Fred Reams, Parc Metropolitan resident, stated his concern that the Comet Drive closure issue and the traffic analysis report has not been completed and keeps

being postponed.

Ms. Heyden replied that the Mall has initiated a traffic circulation study for Comet Drive and it will be coming forth to the June 12, 2002 Planning Commission meeting.

Kai Pan, Parc Metropolitan resident, reiterated Mr. Reams concerns about congestion on Comet Drive, and that the study has been delayed. He is still concerned about traffic near the theater and Dave and Buster's. Cars don't stop at the stop sign and the Police cannot issue citations on a private street. This is an issue for residents and urges the Planning Commission to make a decision to close Comet Drive at the Great Mall.

Dave Jabber, Home Depot Store Manager, explained that the screen wall is being built to enclose pallets at the south end of the building. Since December, he has not received any complaints from citizens in regards to noise, and did not even know that a problem existed. Once the screen wall is built, things will only get better due to any visibility of products being enclosed. He has been receiving products on the south side of the building, whereas the north end is restricted from 7:00 a.m. to 7:00 p.m. Effective Monday, Home Depot has changed their receiving time from 7:00 a.m. to 7:00 p.m. as a precaution so trucks do not roll in through the parking lot at night.

Eric Eileraas, 893 Towne Drive, stated that the reason Home Depot has not been receiving complaints is that most of the units facing Home Depot are unoccupied.

Adrienne Davis, 855 Spirit Walk, commented that the numerous complaints about housekeeping, screen wall construction and unloading/loading of materials have been funneled through the task force to relay to Home Depot.

Close Public Hearing
Agenda Item No. 3

Motion to close the public hearing on Agenda Item No. 3.

M/S: Sandhu/Hay

AYES: 7

NOES: 0

Commissioner Giordano asked what role does the task force play in regards to issues being raised and what are the findings.

Ms. Heyden explained that the task force was formed in July 2001 to assist with compliance with conditions of approval prior to Home Depot receiving their certificate of occupancy. The task then evolved into the Home Depot/Great Mall task force. The goal is to make sure all conditions of approval are completed by the Mall and Home Depot. The task force coordinates with Parc Metropolitan residents to facilitate any concerns they have and periodically meets with them. Most recently their function has included resolution of issues that came up with the denial of the nightclub last December.

In response to Commissioner Giordano's questions regarding the composition of the task force, Ms. Heyden responded that the task force is comprised of staff only and includes a representative from Planning, Engineering, Police, Fire, Code Enforcement and Building, who meet on a weekly basis. The task force approached Home Depot with the screen wall idea. Home Depot then retained the architect and a formal application was submitted and approved by the Planning Commission last November.

In response to Commissioner Giordano's clarifying questions in regards to task force meetings, Ms. Heyden responded that the task force has met with the Board of Directors of Parc Metropolitan about six times since last October, and regularly with the current Home Depot store manager, and previous manager. Often times interested residents show up at the meetings with Parc Metropolitan.

Vice Chair Sandhu asked when have the residents concerns been communicated to Home Depot, and what action has been taken.

Ms. Heyden responded that when issues are raised to the store manager, they are promptly addressed. However, there are periods where past practices cycle back.

Commissioner Galang mentioned his concerns about the northern end delivery, and asked if it could be completely eliminated to use only the south area.

Mr. Jabber replied that that is not possible, since Home Depot receives nursery materials on the southern end and lumber and concrete on the northern end. It would not be feasible to transfer units of concrete back and forth. The task force has directed Home Depot to bring merchandise in as soon as trucks unload.

Commissioner Hay mentioned his concerns about making sure that Home Depot take the proper steps to resolve the issues by residents, and doesn't feel that there has been sufficient time. The proposed mitigation measures are still in the plan check process, and the Planning Commission should retain authority until those measures are completed and evaluated by the Planning Commission as to the impact of the neighborhood.

Motion to continue the six-month review to another six months for Use Permit No. 1555.

M/S: Hay/Williams

AYES: 7

NOES: 0

Ms. Faubion questioned whether the motion required a look at compatibility issues, and that the screen wall be completed by June 15, 2002.

Commissioner Hay commented that the intent of the motion is to evaluate that the mitigation measures are completed without trying to mandate a specific solution. The six-month review will require an additional public hearing.

In regards to the motion, Commissioner Giordano felt that direction should be given to the architect, instead of

delaying the screen wall project.

Ms. Heyden stated that the screen wall was already approved by the Planning Commission.

2. USE PERMIT (NO. 1166) AMENDMENT NO. (P-UA2002-4):
(Applicant: Swerdlow Real Estate Group)

Chair Nitafan opened the public hearing on Agenda Item No. 6.

Joe Oliva, Principal Transportation Planner, presented a review of the parking supply/demand study required by Use Permit No. 1166 (Parking Reduction) and amendment of previous conditions for the Great Mall of the Bay Area, and recommended approval with conditions.

Commissioner Lalwani needed clarification on the following information from the staff report:

A 10 to 20 percent off-site employee-parking factor will result in 500 parking spaces being freed up at the Great Mall, which will bring the holiday parking demand below the 90 percent threshold.

Mr. Oliva responded that this is the minimum number required to bring Mall parking well below the threshold, and due to economic conditions, parking was less than what it was the year before.

Commissioner Lalwani inquired as to how employees would be required to park offsite.

Mr. Oliva responded that staff will be working with the Mall in regards to the details for offsite parking and security issues to make sure conditions are met.

Commissioner Williams mentioned his concerns that only November and December were assessed and limited to particular days. There is a relationship problem between the comments received from residents and non-residents because August and September have parking difficulties, and also Sunday and weekdays.

Mr. Oliva responded that the parking mitigation plan that was approved was part of the environmental documents for the entertainment zone in 1998, which sets specific guidelines for parking. Two different periods analyzed were non-holidays, and holiday. The report excluded the day after Thanksgiving and the day before Christmas because the numbers would have been too much. Sunday usually has 10% less parked cars than Saturday.

Commission Williams mentioned his confusion that he is not getting an accurate picture of parking conditions from the report. Saturday is reported as the busiest day, and the rest of the week, not busy.

Mr. Oliva replied that there is a parking distribution problem at the Mall. The northern and western end of the Mall are occupied 100%, 7 days a week, and people like to park near the store they are visiting and do not like to walk far.

Commissioner Williams stated that he is not against the proposal, but very confused from the report based on observation.

Mr. Oliva reported that the VTA park-n-ride will be adding 117 parking spaces in 2004, and when the City of Milpitas moves during the first week in October, parking will be further alleviated.

Mr. Oliva stated that the Planning Commission could change the conditions by adding signs at the entrance to direct people to the parking structure and available parking.

In response to Commissioner Lalwani's concerns that the parking spaces from VTA would not address the problem, Mr. Oliva responded that commuters would park their cars at the Mall during the weekdays, not the weekends.

Commissioner Hay asked if Phase 2 of the parking plan would be constructed as part of this study and Mr.

Fujimoto responded "No".

On the parking distribution problem, Commissioner Hay commented that staff might consider another parking deck in front of Home Depot.

Vice Chair Sandhu asked if the plan for offsite parking includes employees of the Mall, and/or valet parking.

Mr. Oliva responded that valet parking was instituted last holiday season, and will not be necessary due to the offsite parking proposal. More details will be available by September 1, 2002 for the next holiday season.

Chair Nitafan commented that the survey should have included Christmas and Thanksgiving.

Mr. Oliva responded that the parking demand/supply analysis would not have benefited if those days were evaluated due to high numbers.

Chair Nitafan opened the public hearing on Agenda Item No. 6.

Fred Reams, Parc Metropolitan resident, thanked staff for addressing his parking comments.

Close Public Hearing
Agenda Item No. 6

Motion to close the public hearing on Agenda Item No. 6.

M/S: Galang/Sandhu

AYES: 7

NOES: 0

Motion to approve Use Permit No. 1166 and Amendment No. P-UA2002-4 with staff recommendations and approval of conditions indicated in

the staff report.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

RECESS

Chair Nitafan called a ten-minute recess.

3. USE PERMIT NO. (P-UP2002-12) & S-ZONE AMENDMENT (P-SA2002-23): *(Applicant: Big Sky Entertainment II)*

Chair Nitafan opened the public hearing on Agenda Item No. 4.

Troy Fujimoto, Assistant Planner, presented a PowerPoint presentation for a request to construct a 16,000-square foot nightclub within the Great Mall of the Bay Area, with food service, full service bars serving all types of alcohol and late hours of operation at 1100 South Main Street, and recommended approval with conditions.

Vice Chair Sandhu asked how the gates will be operated.

Mr. Fujimoto responded the gates would be set up at 11:00 p.m. It hasn't been determined if they will be automatic or if someone physically sets it up. Details will be worked out at a later time, prior to permit issuance.

Vice Chair Sandhu asked how will the general public be affected with the gates and signs.

Mr. Fujimoto replied that part of the conditions of approval require adequate signage warning users that there will not be any access.

Vice Chair Sandhu mentioned his concerns about people leaving the area at 2:00 a.m., and asked if the lighting of the parking lot will improve or remain the same.

Mr. Fujimoto replied that the Great Mall recently

changed their lighting in that area, and that the Great Mall could incorporate lighting on the gates.

In response to Commissioner Lalwani's question regarding the gate, Mr. Fujimoto responded that the gate would be closed from 10:00 p.m. to 6:00 a.m. on Comet Drive, and the other four gates would be closed from 11:00 p.m. to 6:00 a.m.

Commissioner Lalwani commented that she was not aware that the Parc Metropolitan residents had signed an agreement acknowledging the Great Mall, and received a reduced price for their homes if they were located along the perimeter.

Commissioner Williams needed clarification of whether high performance motorcycles might be able to go around the gates.

Mr. Fujimoto responded that the gates could be designed to prevent any vehicle access.

Commissioner Hay recalled how at the December 2001 Planning Commission meeting, a concerned resident videotaped the parking lot for two hours. He asked how the gates would keep people from going through the parking lots when there are no marked roadways.

Mr. Fujimoto clarified that in addition to the gates, the Mall will be constructing landscape barriers along portions of the outer ring road, so people will not be able to cross through the parking lot, and cars will not be able to access the outer ring road. The inner ring road will be open to allow people to exit.

After a question from Commissioner Hay regarding how noise issues would be addressed for the eastern portion of Parc Metropolitan, Mr. Fujimoto responded that the gate on the outer ring road near that location would force people to exit the parking lot to the south.

When asked by Commissioner Hay whether the level of security is satisfactory with the Police Department, Commander Berg reported that he has worked closely with Ray Johnson, Vice President of Operations from the Limelight. They have modified the security plan from what was submitted with the December application. He is very pleased with the outcome.

Commissioner Hay asked if the Police looked at community impact, and if there will be any additional impacts on police resources during the swing shift and night shift periods.

Commander Berg replied that when you open any establishment, there would be an impact. He stated that the Police department would have to deploy resources according to the type of crime. There are a number of options that don't necessarily require an increase in staffing, but the conditions of approval state that the Planning Manager and Police Chief have the option to increase security.

Commissioner Hay mentioned his concerns about crowd control, late night staffing and the ability to address the issues.

Commander Berg replied that the club would have to be closely monitored and evaluated. Graveyard shifts are typically slow, and mall officer shifts might be adjusted to keep a close watch to determine what type of resources to deploy and to determine impacts.

After a question from Commissioner Hay regarding the benefit to have a club in the City and the benefit to the people to have a nightclub in this specific location, Mr. Fujimoto replied that the location in that area is identified as the entertainment zone. This use will enhance the whole area of the Great Mall and complements other businesses in that area.

Ms. Heyden also commented that there are positive and negative aspects with any application. As outlined in the staff report, the negative aspects, which are hours of operation, noise, and traffic flow have been determined to be impacts which can be mitigated. The mitigation measures have been transferred to condition of

approvals. The General Plan has two policies encouraging development that furthers stability and balance through an economic base that will help diversify the City. This is a unique use to the City and to the region and will attract citizens from within and outside the City. The Midtown Plan area is in close proximity to the Mall and contains mixed-use districts of residential and commercial uses, that will create a synergy with the club.

Vice Chair Sandhu asked if the gates will restrict parking for nightclub patrons.

Mr. Fujimoto replied that there are no parking restrictions and that people can park anywhere in the Mall. The gate locations proposed prevent access to the outer ring road.

Regarding Vice Chair Sandhu's question regarding controlling the parking, Mr. Fujimoto responded that the nightclub will provide staff to monitor the entrance to the club and mall security will patrol the parking lot area.

Chair Nitafan referenced special condition No. 1 which reads the following:

General - This Use Permit No. P-UP-2002-12 and S-Zone Amendment (P-SA2002-23) approval is for a new 16,456 square foot nightclub with a full service, 60-seat restaurant (outdoor and indoor seats), late night hours (4:00PM to 5:00AM) and the serving of all types of alcohol at the Great Mall of the Bay Area as shown on approved plans dated April 10, 2002, except as may be otherwise modified by these conditions of approval. Minor changes, as per Sec. 42-10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff.

In response to Chair Nitafan's request for clarification on hours of operation, Mr. Fujimoto responded that the indicated times are for weekends and holidays.

Chair Nitafan stated that the hours need to be revised to read Sunday-Thursday 4:00 p.m. to 3:00 a.m. and Friday-Saturday 4:00 p.m. to 5:00 a.m. and holidays.

Roger LeBlanc, President of Swerdlow

Management Group, commented that the Mall has worked with the applicant for quite some time and also with Parc Metropolitan in regards to noise control and crowd control. They have also come up with a solution in regards to the gate barriers. The landscaping will be modified to add additional trees along the south side of the ring road so cars cannot come through. The music from Dave and Busters will also be turned off to resolve any noise issues. The Mall provides security 24 hours a day, with monitoring cameras located in the parking deck. Two additional officers were also brought on.

Ray Johnson, 210 Rainbow Place, Vice President of Operations at Big Sky Entertainment

, wanted to first thank Planning staff for their hard work in resolving the residents issues and mentioned that the Limelight wants to be a good corporate citizen for the City. He has had conversations with Parc Metropolitan and listened to their concerns. He is looking for cooperation to work with people, not confrontation. Problems exist today without a nightclub. He quoted former Commissioner Evelyn Chua who said, "The point is to be part of the solution whether you like it or not".

Mr. Johnson commented that there are improvements with the new application. Any impacts in the neighborhood will have to be dealt with. Dave and Buster's lets their customers smoke outside, and he has not heard one single complaint. Dave and Buster's is approximately 360 feet away from Parc Metropolitan, and the proposed night club front door is about 720 feet away. The club has taken the necessary precautions for noise such as installing the double doors, gate barriers, and locating the front door away from residents, which points towards Media Play. The conditions of approval also require parking lot sweeps and guards in the parking lot at all hours of the night. They will enforce employee parking away from the club. There will be unavoidable trouble such as people jumping over the gates or into backyards. Most customers will be coming from Great Mall Drive, and the club's voicemail will indicate directions from the south end using Falcon and Mustang Drives.

Mr. Johnson also reported that a traffic study has been done and concludes that if these gates are in, there will be very little noise. He also explained the late night hour issues and that is better for people to stay at the club until they sober up.

Commissioner Galang asked if during peak hours, would patrons have to wait outside to gain entrance.

Mr. Johnson replied that security staff consists of 15-20 people. Five experienced members control the line. The parking lot sweeps will be completed by club staff who will sweep before and after alcohol stops being served.

Commissioner Galang needed clarification regarding in and out privileges and last call.

Mr. Johnson replied that patrons who are stamped have in and out privileges until 1:40 a.m.

Commissioner Galang asked if during the holiday, will inside shoppers be able to hear the music.

Mr. Johnson replied that the music level is raised after 11:00 p.m., so there should be no impact on shoppers in the mall due to the location.

In response to Commissioner Galang's questions about the back door exits, Mr. Johnson replied that they are emergency exits only.

Commissioner Galang also asked if there would be food served outside.

Mr. Johnson replied "Yes", and that there will be 40 outside seats and 30 inside. The club will be offering a late night menu.

Commissioner Williams mentioned his concerns about loud cars passing by with loud music, and asked how that will be addressed.

Mr. Johnson replied that five security guards will be outside. He knows that this is a sensitive issue and that club staff is trained to deal with this kind of situation.

Commissioner Williams echoed Commissioner Hay's concerns about the resident with the videotape, and asked how will the security plan be effective so that patrons congregating in the parking lot making noise will be addressed.

Mr. LeBlanc reported that the theater attracts a lot of people, and is one of the top 50 theaters in the United States. Sales last year were \$13 million dollars, and Dave and Buster's brought in \$23 million dollars last year. The incidents in the video were relatively small in comparison to other locations. He meets with security staff daily and reviews incidents. It is a joint effort with everybody. There is always room for improvement.

Commissioner Williams asked if Mall management would be taking proactive steps of incidents that are brought to attention by the public to preclude any problems.

Mr. Leblanc responded "absolutely", and that the Mall is the biggest one to lose if there are any incidents because they could lose potential business or it could hurt business. There are 26 security people employed at the Mall now, and panic phones have been installed in the parking garage.

Commissioner Lalwani commented that noise is the main criteria, and needed clarification about Dave and Buster's being 360 feet away from the closest house. She also needed clarification about the nightclub's front door being 720 feet away since the staff report indicates 600 feet.

Mr. Johnson replied that it is an estimate only.

Commissioner Lalwani asked if the nightclub would be built at an angle and Mr. Johnson replied "Yes".

Commissioner Lalwani commented that she likes the fire, water, wind, and earth concept. Commissioner Lalwani also asked if the task force would continue the process to monitor resident's complaints.

Ms. Heyden responded that the Planning Department is the first point of contact for basic questions, and Parc Metropolitan residents have felt comfortable calling in the past and have done so.

Vice Chair Sandhu asked if the security guards will be armed.

Mr. Johnson replied "No", and that a few will be carrying handcuffs. Also, every guard has a radio.

Commissioner Hay asked how high is the barrier in the parking lot that runs east and west.

Mr. Johnson replied that he did not know because the design solution was just decided yesterday at a meeting with Parc Metropolitan.

Commissioner Hay questioned if the barrier is designed to limit noise from south, and to keep vehicles out of the outer ring road. Commissioner Hay also asked if the residents received a copy of the updated traffic study.

Ms. Heyden responded that the first version was available to the residents, but the second one just became available, so they probably had not seen it.

Mr. Johnson also commented that the study was sent out last week to residents and the updated copy was just received today.

Chair Nitafan asked what specific activities would be planned between the hours of 2:00 a.m. to 5:00 a.m.

Mr. Johnson replied the basic club activity is dancing, socializing and late night dining. A third of the people that come to clubs generally do not drink alcohol.

Chair Nitafan opened up the public hearing on Agenda Item No. 4.

Fred Reams, 899 Contemplation Drive, wanted to thank Swerdlow Management Group, Tambri Heyden, and Adrienne Davis for their cooperation. He is satisfied with the noise mitigation measures, the gates on the outer ring road, the parking lot sweeper, and employees in the parking lot. He doesn't agree with extended hours and feels that their use permit should be until 2:00 a.m., and then after six months, maybe apply for extended hours. Property value is also a very big concern because of the nightclub and extended hours.

Adrienne Davis, 855 Spirit Walk, is disappointed with Planning staff for suggesting he paid a lesser price for his home because he lives near the Great Mall. He does think that the Planning Staff is moving down the right direction, but doesn't agree with the extended hours and feels it should be until 2:00 a.m. He agrees with Mr. Reams that a six month review be conducted before hours can be extended.

Alex Chu, 892 Towne Drive, thanked the Planning Commission for turning down the previous application. He feels that the double doors, the outer ring road and parking lot sweeps will not be sufficient and is concerned that security just passes by and never stops and tells people to leave. He is also concerned about people dancing, screaming, yelling, people turning up music from their car, and the high potential for crime. He felt this doesn't benefit residents, and that a family-oriented business should be built such as a Chuck E. Cheese.

James Yin, 897 Meditation Place, stated that the noise from Dave and Buster's has affected his life. He is afraid to take his daughter to the park because of intense traffic. Noise comes from the parking lot, and cars "rev" their engines late at night. He doesn't want to

give up sleep for the Mall.

Kai Pan, 902 Waterwalk, stated that the Mall is not a great location for the club because of the proximity of the neighborhood. Police can't enforce the vehicle code at the mall and problems can only get worse due to traffic, late night noise and unruly behavior. He is not against a nightclub in Milpitas. The club should be located at the McCarthy Ranch and not in the backyards of families with children. He urges the Planning Commission to deny the application and find an alternative location.

Carl Kam, 912 Raindance, stated his concerns about who is going to enforce security and the parking sweep. Also mentioned that there are no nightclubs at other malls such as Valley Fair and Eastridge. Nightclubs have been proven to be unsafe with drive by shootings. A lot of residents are immigrants who did not grow up in this area and now it is a nightmare. He would tell somebody to think twice before living in Milpitas.

Ed Viser, 5662 Owens Drive, Pleasanton CA, mentioned that he was the original architect for the Limelight club, and when the application was denied, he lost his job. He spent about 90% of his time working in Milpitas.

Hector Cabrall, 1300 Stardust Way, understands residents' concerns and feels that the club would be a good benefit to Milpitas. He feels that the extended hours is a good idea because people could get DUI's. Security should be able to abate the noise, but it depends on the police force.

Johnny Zhang, 848 Towne Drive, stated that things are going from bad to worse due to loud music late at night and questioned how the nightclub can be trusted to control noise. There are loud motorcycles, loud music, and people jumping into backyards of neighborhoods. He loves this city and there are a lot of good people. He wants to make the neighborhood better.

Chris Real, 152 Court, is excited that the Limelight is coming to Milpitas. His kids could go there and be safe.

Phuong Luu, 396 Meditation Place, is scared to walk outside because people scream and yell at him from the parking lot. He has been to clubs in San Jose and there is a lot of fighting. He feels that the club will bring crime into our community and is worried about the future of the City.

Concerned resident, 858 Spirit Walk, stated that his family is suffering from noise that keeps them up late at night. He wakes up from crowds in the parking lot. There is no point to approve the nightclub.

Jesse Real, 156 Poppy Lane, recalled how he went to the Limelight Club in Mt. View and that security was tight, very low key, and felt very safe in the restaurant. People weren't hanging outside and car stereos weren't blasting. He feels that the club should be given an opportunity.

Jason, 321 Celebration, feels that the club is a great idea, but not at the Great Mall. People who are excited about the club do not know how it feels because they don't live near the Mall. He currently hears music from Dave and Buster's, deals with traffic problems, and can't do anything about the noise. People are constantly coming and going.

Mr. Chang, Parc Metropolitan resident, asked the Planning Commission what would they do if they had a nightclub next to their home.

Darryl Hong, 889 Inspiration Place, stated that it is a nightmare for residents, especially for the noise at night. He discourages the nightclub.

Eric Eileraas, 893 Towne Drive, wanted to compliment the Planning Commission on clarifying questions and for treating this matter seriously. He feels that the extended hours of operation and increased occupancy at the north end of the mall is incompatible with the residents. He felt there is no data or comprehensive impact of what the nightclub issue will bring us. The nightclub will make the situation worse and will be a major impact. He recommended a possible

relocation of the entertainment zone. The late night hours of the Mall will keep him up at night. He felt that the application was rushed and that most affected residents don't live there yet. He objects to the proposal and feels that it will worsen the impact of homeowners, and devalue the area.

Karen Tario, 893 Towne Drive, wanted to thank the Planning Commission for staying late and listening to the concerns of residents. She quoted Mayor Manayan by saying, "The City of Milpitas is a community we can be proud of in times of crisis". Currently, Parc Metropolitan residents have to deal with drug deals, loitering, beer bottles and cars racing in the parking lots. She wants to live in a safe and secure location.

Dan Cetina, General Manager of the Great Mall, appreciates the comments from concerned residents, and stated that the Mall is very proud of their accomplishments. It has become a great attraction to the Santa Clara County Valley. He also commented that Mall security works very hard with the Police department. He doesn't want to anger neighbors and wants to be a good neighbor. He addressed their concerns to mitigate noise factors, and people loitering in the parking lot. Security officers have taken sensitivity training on how to approach people to be good visitors without being confrontational. He added that traffic would be closed off at the north end to address noise.

Close Public Hearing
Agenda Item No. 4

Motion to close the public hearing on Agenda Item No. 4.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Commissioner Giordano stated that she has evaluated the information presented tonight, heard the input from the public, and thought a great deal about the project. She is not opposed to nightclub activity in Milpitas and approval of an entertainment center, but feels that the nightclub is the main component of the facility. She stated that she could not support the application because the Mall parking does not presently solve the parking equation that this could create. She felt that Dave and Buster's expansion will duplicate components of this project.

Commissioner Hay mentioned his concerns about the Parc Metropolitan residents not reviewing the traffic study. He doesn't feel that the property will increase in value being next to the Mall. There is excess demand and not enough housing. He thanked Swerdlow Management, the Great Mall, the applicant, and staff for the time spent on mitigating the problems. This business may produce more revenue to the city, but stated he could not support the request due to close proximity to Parc Metropolitan, and late night noise.

Vice Chair Sandhu recalled how he opposed the application the last time. In this case, he is impressed with the research Mr. Johnson provided such as mitigating concerns. The Limelight club has a good reputation and is a quality type of entertainment. If the City of Milpitas does not have a club, our children will go to other areas such as San Jose and Oakland. Therefore, he stated his support of the project.

Commissioner Lalwani recalled how the last time she opposed the project, and feels that Mr. Johnson has bent over backwards to accommodate all the issues. She recommended that the applicant adjust the time to 3:00 a.m., and have a review in six months with feedback from residents.

In response to Commissioner Galang's question about the task force addressing the parking lot noise complaints, Ms. Heyden commented that the sensitivity training that the security guards received 60 days ago shows them how to deal with people in a more proactive approach to control the mall parking lot. Since then no complaints have been received. She stated that the noise issue in the parking lot has been addressed from a security standpoint. Different techniques to address the outer ring noise will be resolved through the gate proposal.

Commissioner Galang requested a six months review for the club as well. He is impressed with the nightclub and feels they have done an outstanding job working with the Police. Therefore, he supports the project.

Commissioner Williams stated that he understands resident concerns about noise, and he himself spent 30

years living near the Los Angeles airport. He's talked to residents not living in Parc Metropolitan and that they wished people had a local place to go, both young and old, without going to San Jose. He knows that the City will do the best they can to serve the community.

Chair Nitafan admired the applicant because they chose to come back to the Planning Commission instead of appealing to the City Council. There are pros and cons with the project, but thinks we should give it a try. He wanted assurance that if the nightclub were sold, that it would be the same quality.

Mr. Cetina replied that the current lease gives the Mall the right to approve the assignment of tenants. The Mall would want high quality operators, and has the right to review them before they sell the nightclub.

Ms. Heyden also commented that the use permit runs with the land so any conditions of approval are tied to the project, and would be passed on to anybody that operates a club at that location. Anything that is in writing would be a requirement to the next owner as enforceable conditions of approval.

Chair Nitafan stated that the mitigation measures would lessen the problems and hopes the nightclub will be part of solutions. He stated he was in favor of the nightclub.

Motion to approve Use Permit No. (P-UP2002-12) & S-Zone Amendment (P-SA2002-23) based on the findings and special conditions and with revised conditions to No. 1 and No. 9 changing extended hours of operation to 3:00 a.m.

M/S: Sandhu/Lalwani

AYES: 5

NOES: 2 (Giordano and Hay)

Ms. Faubion stated that there is an appeal process, and interested parties can contact the Planning Department.

RECESS

Chair Nitafan called a five-minute recess.

4. USE PERMIT (NO. 1167.18) AMENDMENT NO. (P-UA2002-2): *(Dave and Busters Inc.)*

Chair Nitafan opened the public hearing on Agenda Item No. 5.

Troy Fujimoto, Assistant Planner, presented a request for approval of a 4,700 ± square-foot expansion for additional gaming area and meeting rooms at Dave and Buster's within the Great Mall of the Bay Area at 940 Great Mall Drive and recommended approval with conditions.

In response to Commissioner Lalwani, Mr. Fujimoto responded that the designated expansion area is currently vacant.

Chair Nitafan opened the public hearing on Agenda Item No. 5.

Fred Reams, 899 Contemplation Drive, asked for a condition to be added for Dave and Buster's to do parking lot sweeping as the nightclub proposed to do.

Kai Pan, 902 Waterwalk, requested a six-month review be required.

Feng Wu, 896 Waterwalk, stated that approving two projects is too much.

Johnny Zhang, 848 Towne Drive, stated that the Dave and Buster's and the nightclub are double jeopardy.

Resident, Firewalk, expressed that both projects being approved will double the noise problem.

Eric Eileraas, 893 Towne Drive, stated that he gave staff a detailed memo during tonight's meeting about Dave and Buster's problems and that he does object to

the proposal. There is no basis for an expansion, which would have environmental impacts. Closing the outer ring road at a reasonable hour, increasing police staff, and banning cars from overnight parking would help.

Jason, 321 Celebration, stated that he feels Dave and Buster's has offered nothing to mitigate existing conditions.

Brian Spane, with Dave and Busters, noted that he doesn't feel that people who use their banquet facilities are those in the parking lot playing their boom boxes. Dave and Buster's intends to maintain their corporate record.

Commissioner Williams advised Mr. Spane to address issues raised by residents.

Mr. Spane responded that he would monitor their own employees when they leave. He feels the problems might be with their cleaning crew and will address that tomorrow morning. He emphasized their commitment to working with Mall management to address parking lot issues.

Commissioner Giordano asked about existing hours.

Mr. Spane responded that Dave and Buster's is currently open from 11:00 a.m. to 1:00 a.m. on the weekdays, and 11:00 a.m. to 2:00 a.m. on the weekends.

Commissioner Giordano expressed that shared parking doesn't address long-term parking associated with the entertainment aspect.

After Commissioner Giordano's questions regarding the parking structure, Mr. Fujimoto responded that the parking structure was triggered by Home Depot. The entertainment aspect was looked at with the expansion and is satisfied by the recently constructed parking in front of Sportsmart.

Commissioner Giordano stated that parking as a whole needs to be looked at rather than bit by bit with each new application.

Brett Walinski, Hexagon Corporation, noted that the Mall does supply/demand surveys during holiday and non holiday seasons every year and reviewed the most recent survey data that indicated Dave and Buster's back lot is least used.

After being asked by Commissioner Williams whether Sunday's have been surveyed, Mr. Walinski replied that surveys are done on worst case days and Saturdays are worse than Sundays in terms of demand, which is consistent with published manuals.

Commissioner Lalwani asked what is the square footage of both banquet rooms.

Mr. Spane responded 2,500 square feet.

Close Public Hearing
Agenda Item No. 5

Motion to close the public hearing on Agenda Item No. 5.

M/S: Hay/Lalwani

AYES: 7

NOES: 0

Motion to approve Use Permit No. 1167.18 Amendment No. P-UA2002-2 with staff recommendations and approval of conditions.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

**5. S-ZONE
AMENDMENT (P-**

Chair Nitafan opened the public hearing on Agenda Item No. 7.

SA2002-4): (*Swerdlow Real Estate Group*)

Troy Fujimoto, Assistant Planner, presented a request to amend an existing sign program, including new colors and theme, and new architectural entrance elements, for the Great Mall of the Bay Area, at 1100 South Main Street, and recommended approval with conditions. Mr. Fujimoto noted that this item was considered by the Planning Commission almost two months ago when the Commission asked the applicant to come back when they could present a comprehensive sign package. Since no new information has been submitted, staff's recommendation is unchanged.

Roger LeBlanc, President of Swerdlow Management Group, indicated the Mall has hired a sign designer who has designed signs all over the country.

Martin Schwartz with RSD, Inc., mentioned that the color and numbers system being proposed is universally understood since it is multi-cultural. Each parking field has a color and a number this is carried inside to the nearest building entrance. In terms of wayfinding, the same color pallet is used with the exterior signs and interior signs.

Commissioner Williams asked why the sign was erected prior to approval.

Jack Williams, with Swerdlow Management, stated that there was miscommunication between the sign contractor and staff.

Commissioner Galang asked about the size of the letters on the directional sign.

Mr. Schwartz replied that some are 3 and 3/8" high and some are 5" high.

Commissioner Galang stated that the lettering should be made larger.

Commissioner Lalwani suggested audio at the entrance reminding customers which color and number parking field they parked in.

Commissioner Hay felt that the directional sign colors are hard to read.

Chair Nitafan opened the public hearing on Agenda Item No. 7.

Eric Eileraas, 893 Towne Drive, noted that he has submitted written comments that have been given to each Planning Commissioner.

Feng Wu, 896 Meditation Place, indicated that the parking lot lighting needs to be redirected away from residences.

Motion to close the public hearing on Agenda Item No.7.

Close Public Hearing
Agenda Item No. 7

M/S: Sandhu/Giordano

Prior to a vote being taken, Mr. Fujimoto clarified, upon request by Commissioner Williams, that light shields were required when the lighting plan was approved several months ago.

AYES: 7

NOES: 0

At this point discussion ensued about which original conditions of approval could be deleted given the applicant's presentation.

Motion to approve S-Zone Amendment P-SA2002-4 with a new condition requiring adding a contrasting colored line around the letters on the directional signs and with staff conditions 1, 2, 3, and 4 as written and revisions to 6 and 7 as noted below:

6. The sign program for the Great Mall of the Bay Area shall be amended to require that the tower color scheme include yellow as a primary component of any signage.

7. Prior to any modifications to the graphic panels above the mall entrances, the applicant shall submit plans for the awning portion of the structure (middle section above the entrance, but below the graphic panels) to be white.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**IX.
OLD BUSINESS**

Chair Nitafan opened the old business item on Agenda Item No. 8.

**6. S-ZONE
AMENDMENT (P-
SA2002-2):** *(Swerdlow
Real Estate Group)*

Troy Fujimoto, Assistant Planner, presented a request to approve a color scheme for a freestanding sign, at 1100 South Main Street, and recommended approval with conditions. Mr. Fujimoto noted that this item had been continued from a previous meeting two months similar to the previous agenda item. Again, since no new information was submitted, staff's recommendation is unchanged.

Motion to approve S-Zone Amendment P-SA2002-2 with staff recommendations and approval of conditions.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 1:00 a.m. to the next regular meeting of April 24, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

May 8, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Sandhu, Galang, Giordano, Hay, Lalwani, Williams

Absent: None

Staff: Faubion, Fujimoto, Heyden

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES**

April 24, 2002

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of April 24, 2002.

Chair Nitafan made a correction on Page 7 to read the following:

Chair Nitafan felt that if we rely on a computer system for pavement improvement programming, we miss what can be detected visually in the field.

Motion to approve the minutes of April 24, 2002 with the corrective changes.

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced the current subcommittee rotation for the 2nd quarter, which includes Commissioner Hay and Commissioner Williams. The alternate is Vice Chair Sandhu.

Ms. Heyden also recommended that the May 22, 2002 Planning Commission be cancelled due to lack of public hearing items.

Chair Nitafan commended staff for the resurfacing of

Main Street.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

Since there were no Agenda Items recommended for the consent calendar, Chair Nitafan deleted this agenda item.

**VIII.
PUBLIC HEARING**

Chair Nitafan opened the public hearing on Agenda Item No. 1.

1. USE PERMIT NO. (P-UP2002-10): *(Cingular Wireless, 250 Roswell Drive)*

Troy Fujimoto, Assistant Planner, presented a request to install telecommunication antennas on the roof of an existing school building at Rose Elementary at 250 Roswell Drive, and recommended approval with conditions.

Commissioner Hay asked to what extent potential health risks pose a problem.

Kit Faubion, City Attorney, stated she researched the Public Utility Commission web site where there is much information on Electric Magnetic Fields (EMF). Harmful health effects have not been documented. She recommended working with staff to prepare some standard language for staff reports regarding the Planning Commission's inability to consider EMF.

Lea Hernickle, Ruth and Going, representing Cingular Wireless, mentioned that she is available to answer any questions or concerns.

Commissioner Hay asked whether the School District is satisfied.

Elaine Seantelieu, Contract Specialist, representing the School District, stated that this would not go to the Board until their May 28, 2002 meeting.

Commissioner Hay commented that if the School Board

decides to change the location, what would be the alternatives.

Ms. Heyden stated that location changes would require an amendment to the Use Permit.

Ms. Seantelieu stated that she doesn't foresee any problems with the Board approval.

Chair Nitafan opened Agenda Item No. 1 to public comment.

Randy Aschlemann, 360 Monmouth Drive, expressed concern with health conditions resulting when the antenna transmits as well as receives.

Close Public Hearing
Agenda Item No. 1

Motion to close the public hearing on Agenda Item No. 1.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

Commissioner Williams thanked staff for the summary report and stated that today's commercial antennas are much safer than those experienced in the military, given less power and emissions.

Motion to approve Use Permit No. (P-UP2002-10) with staff recommendations and approval of conditions indicated in the staff report.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**2. USE PERMIT
AMENDMENT NO. (P-
UA2002-5) & S-ZONE
AMENDMENT (P-
SA2002-20):** (*Applicant:
Avatamsaka Buddhist
Lotus Society*)

Troy Fujimoto, Assistant Planner, presented a request to build a 2-story sanctuary building, renovate an existing building, and make site modifications at 50 South Main Street and recommended approval with conditions.

After a question from Vice Chair Sandhu, Mr. Fujimoto clarified that underground parking will not be included.

In response to Commissioner Hay's question, Mr. Fujimoto replied that a low water table, maintenance of another facility, and potentially securing the property on

the east prevented the applicant from building underground parking.

Commissioner Lalwani asked when are the busiest days.

Mr. Fujimoto responded that Sundays were the busiest, which include 180 attendees that will generate a parking demand of 52 stalls.

Commissioner Galang needed clarification on the size and purpose of the dormitory units and Mr. Fujimoto deferred the question to the applicant for a later response.

Chair Nitafan requested Special Condition No. 2 to be changed to read the following:

Any future concerns in regards to inadequate lighting or to excessive glare or brightness onto neighboring uses from the new light poles in the parking lot, shall be addressed by the applicant to staff's satisfaction to correct the problem.

Commissioner Williams asked if the original light fixture is still being proposed and Mr. Fujimoto responded that it was.

Chair Nitafan asked for clarification regarding compliance with the City's Streetscape Master Plan standards, Special Condition No. 5a which reads the following:

5. Prior to building permit issuance, the applicant shall submit to the Planning Division for approval revised landscaping plans which shall incorporate the following:

a) Revised locations of street trees (some trees shall be located within the public sidewalk along Main and East Carlo Streets) to comply with City Streetscape Landscape standards.

Mr. Fujimoto clarified that the condition addresses the need for tree wells for the street trees and not the corner landscape treatment, which is satisfactory.

Commissioner Hay asked what "P-old" means in the staff report under special conditions and also asked what two conditions are being requested to be deleted.

Mr. Fujimoto responded that "P-old" refers to Planning Division special conditions carried over from the original use permit. He also asked the Commissioners to refer to the Addendum to the EIA, which specifies which previous conditions are being eliminated – Condition No. 7 & 8 related to off-site parking.

In response to Chair Nitafan's question regarding Resolution No. 453, Mr. Fujimoto clarified that the

temple's special events fall under the Resolution and only require Planning Commission approval if over 14 days. Subcommittee approval is required for events over 3 days, and staff level approval is allowed for events up to 3 days.

After a question from Commissioner Galang regarding whether special events would take place on Sunday only, Mr. Fujimoto responded "No", that the special events would take place three times a year.

Chair Nitafan opened the discussion to public comment.

There were no speakers from the audience.

Close Public Hearing
Agenda Item No. 2

Motion to close the public hearing on Agenda Item No. 2.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

After a question from Commissioner Lalwani, **Dennis Jhen, Applicant**, stated that the temple offers seven disciplines of Buddhism, which is different from the San Jose temples. Also, there will be an office in the temple operating on normal business hours.

Commissioner Galang asked about the size of the dormitory units on the 2nd floor.

Mr. Jhen explained that the dormitories are for guests.

Steve Yen, Architect, mentioned that converting an existing facility poses physical constraints, which cause the difference in the dormitory size. Up to five nuns and a caretaker will live there all the time.

Chair Nitafan asked if the trees would be saved on the site.

Mr. Fujimoto responded "No" that they would be replaced, which requires a tree permit if the trees are over a certain size.

Motion to approve Use Permit Amendment No. (P-UA2002-5) & S-Zone Amendment (P-SA2002-20) with staff recommended special conditions and the addendum to the EIA with the noted revision to Special Condition No. 2 regarding glare and lighting.

M/S: Hay/Lalwani

AYES: 7

NOES: 0

RECESS

Chair Nitafan called a recess to 7:55 p.m.

IX. NEW BUSINESS

3. RESOLUTION NO. 490-ADOPTION OF PLANNING COMMISSION BYLAWS:

*(Staff Contact: Tambri
Heyden, Planning
Manager)*

Tambri Heyden, Planning Manager, presented Resolution No. 490-Adoption of Planning Commission Bylaws, and recommended that the Commission recommend approval to Council. Ms. Heyden's presentation highlighted the following issues: subcommittee rotation, language of intent, conflict of interest, Commission duties, CEQA compliance, special meetings, attendance, quorums, agenda preparation and distribution, agenda contents, abbreviated minutes, meeting conduct, and speaker remarks.

Commissioner Williams mentioned how it is a pleasure to be on the Subcommittee and that the Bylaws are concise.

Commissioner Galang stated that he was pleased with the Bylaws.

Commissioner Lalwani commented that the Bylaws were well-explained.

Commissioner Giordano asked what is meant by resolution of conflict of interest issues and if it meant resolved from the FPPC.

Kit Faubion, City Attorney, responded that the language was written to suggest that when there is an unresolved issue it should be continued to gather information.

Commissioner Lalwani asked about the process to follow when Commissioners receive applicant letters.

Chair Nitafan replied that the Commissioners should call the Chair and seek clarification from staff.

Commissioner Hay asked that communications become part of the record.

Vice Chair Sandhu felt that the Planning Commission should have an office at the new City Hall.

Chair Nitafan mentioned that his last name is misspelled within the resolution, and also felt Planning Commissioner plaques for service should be in the new City Hall.

Commissioner Williams agreed.

Ms. Heyden stated that she would research this issue and report back.

Motion to approve Resolution No. 490-Adoption of Planning Commission Bylaws as submitted, recommending City Council approval.

M/S: Galang/Lalwani

AYES: 7

NOES: 0

Chair Nitafan opened Agenda Item No. 4.

4. CONFLICT OF INTEREST PRESENTATION AND DISCUSSION: (*Staff Contact: Kit Faubion, City Attorney*)

Kit Faubion, City Attorney, distributed a handout regarding conflicts of interest under the Political Reform Act. Ms. Faubion described components of a conflict of interest involving economic interest such as business investments, real property, sources of income and gifts; and influencing the making of a decision. Other points discussed were disqualification if a conflict exists, the rule of necessity, limitations on gifts, obtaining an FPPC advice letter, penalties for violations, and ex parte contacts.

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:00 p.m. to the next meeting of June 12, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

June 12, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Vice Chair Sandhu called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Sandhu, Galang, Giordano, Hay, Lalwani,
Williams

Absent: Nitafan

Staff: Faubion, Fujimoto, Heyden

**III.
PUBLIC FORUM**

Vice Chair Sandhu invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES**

May 8, 2002

Vice Chair Sandhu called for approval of the minutes of the Planning Commission meeting of May 8, 2002.

There were no changes to the minutes.

Motion to approve the minutes of May 8, 2002 as submitted.

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, mentioned that the City Council approved the Planning Commission Bylaws and that staff would be distributing them for the next Planning Commission meeting in a loose-leaf format for the Planning Commissioners to add to their Commissioner manuals. She also announced that the Midtown Plan copies have been distributed to the Planning Commission. Ms. Heyden drew the Planning Commissioner's attention to the cover of the document that has an insert containing a marketing brochure for Midtown developers. The plan is available to the public for \$18.00.

Ms. Heyden also announced that the League of California Cities Conference in Longbeach will be held from October 2-5, 2002, and that any Planning Commissioners interested in attending should call Veronica Rodriguez by the second week in July so that staff can make travel and registration arrangements. The cost of Planning Commissioners' attendance is budgeted. Regarding the Planning Commissioners' request for staff to look into Planning Commissioner space at the new City Hall, Ms. Heyden requested the Planning Commissioners let her know what items they each have that they want displayed in City Hall so that she can make an inventory and project space needs.

Commissioner Lalwani announced installation of the new Chamber of Commerce Board on June 27, 2002 at the Crowne Plaza hotel and instructed the audience to call 262-2613 to buy tickets.

Commissioner Giordano announced the 50th anniversary of the Milpitas Rotary Club celebrated on June 8, 2002.

**VI.
APPROVAL OF
AGENDA**

Vice Chair Sandhu called for approval of the agenda. There were no changes to the agenda.

Motion to approve the agenda.

M/S: Giordano/Galang

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR**

Vice Chair Sandhu asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

Commissioner Williams requested Agenda Item No. 1 and Agenda Item No. 3 be added to the consent calendar.

Annelise Judd, Assistant Planner, advised of a change to the staff recommendation for Agenda Item No. 3, condition of approval No. 3 – that the S Zone approval be contingent upon City Council approval of the Mitigated Negative Declaration.

Vice Chair Sandhu opened the public hearing on Consent Item Nos. 1, 2 and 3.

There were no speakers from the audience.

Motion to close the public hearing on Consent Item Nos. 1, 2 and 3.

M/S: Giordano/Hay

AYES: 6

NOES: 0

Motion to approve the consent calendar with staff recommendation (including the change to Item No. 3 noted above) and special conditions noted in the staff report as follows:

***1 USE PERMIT NO. P-UP2002-16:** A request for approval to operate a 57-seat internet cafe from 10:00 AM (9:00 AM during the holiday season) to 1:00 AM daily at the Great Mall of the Bay Area, 124 Great Mall Drive (APN: 086-24-055). Applicant: Cyber Hunt Cafe. Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: Approval with Conditions*)

***2 USE PERMIT AMENDMENT NO. P-UA2002-10:** A six month review in regards to compliance with previously approved special conditions for a take-out restaurant at 10C South Abbott Avenue (APN: 022-25-037). Applicant: Kitchen to Go.Com. Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: Approval with Conditions*)

***3 "S" ZONE APPLICATION (P-SZ2002-2) and
MITIGATED NEGATIVE DECLARATION (P-EA2002-4):**

Proposed Berryessa Creek Trail, Reach 3, and Pedestrian Bridge. Project Location: Reach 3 extends from N. Hillview Drive to N. Abel Street, the bridge location is over Berryessa Creek, near Gill Park and the Town Center shopping center (APN: 28-12-1, 2 & 3, 28-21-60, 28-19-63). Project Contacts: Gail Seeds, 586-3324 and Annelise Judd, 586-3273. *(Recommendation: Approval of "S" Zone Application contingent upon Council approval of the Mitigated Negative Declaration and recommend to Council adoption of the Mitigated Negative Declaration)*

M/S: Hay/Giordano

AYES: 6

NOES: 0

Troy Fujimoto, Assistant Planner, announced that a speaker from the audience wished to discuss Agenda Item No. 3. Motion and second to approve the consent calendar was withdrawn.

Anh Bui, 596 Paseo Refugio, expressed concern that the bridge is too close to another proposed crosswalk. The bridge has easy access for people to get to her residential development and kids will hang out at the bridge.

Commissioner Lalwani asked for clarification from staff as to whether the speaker provided comments the first time this went to the Planning Commission.

Ms. Judd mentioned that this was not the same person and the comments were addressed in the initial study.

Motion to approve the consent calendar with staff recommendation and special conditions noted in the staff report as follows:

M/S: Hay/Giordano

AYES: 6

NOES: 0

**VIII.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:20 p.m. to the next regular meeting of June 26, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning
Commission
Secretary

VERONICA RODRIGUEZ
Recording
Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

June 26, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Sandhu, Galang, Giordano, Hay,
Lalwani, Williams

Absent: None

Staff: Faubion, Fujimoto, Heyden

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES**

June 12, 2002

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of June 12, 2002.

Commissioner Hay remarked that the descriptive identifiers on the left-hand column of the minutes are missing, and would like these added in the future.

There were no changes to the minutes.

Motion to approve the minutes of June 12, 2002 as submitted.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

ABSENTIONS: 1 (Nitafan – due to absence at the June 12, 2002 meeting)

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced that the subcommittee rotation for next quarter starts at the next Planning Commission meeting, and includes Commissioner Williams and Vice Chair Sandhu. Commissioner Giordano is the alternate.

Commissioner Lalwani announced that the Chamber of Commerce, on June 27, 2002 at the Crowne Plaza hotel will install its new Board and instructed the audience to call

262-2613 to buy tickets.

Commissioner Giordano requested that the Parks Facility Survey be agendized for a future Planning Commission meeting.

Commissioner Hay mentioned the two used car tent sales coming up on the weekend and asked staff to agendize this topic in regards to the review process.

Ms. Heyden requested more time to agendize the item and direction as to what the Planning Commission would like staff to bring back and include in the packet for this item.

Commissioner Hay requested information on the different processes for each type of review and what the review includes.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Hay/Giordano

AYES: 7

NOES: 0

VII. CONSENT CALENDAR

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

Commissioner Hay requested that Agenda Item No. 2 be added to the consent calendar.

Chair Nitafan opened the public hearing on Consent Item Nos. 1, 2 and 3.

There were no speakers from the audience.

Close Public Hearing Consent Item Nos. 1, 2 and 3

Motion to close the public hearing on Consent Item Nos. 1, 2 and 3.

M/S: Hay/Lalwani

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 3, 5 and 6 with staff recommendation and special

conditions noted in the staff report as follows:

***1 USE PERMIT NO. UP2002-20:** A request for a 290 square foot rear building addition to a legal non-conforming residence at 231 South Park Victoria Drive (APN: 88-03-010). Applicant: Hassan Mahmoudi. Project Planner: Staci Pereira, 586-3278. (Recommendation: Approval with Conditions)

***2 USE PERMIT NO. P-UA2002-14 (USE PERMIT NO. 1576 AMENDMENT):** A request to modify Condition of Approval No. 15 regarding timing to obtain a Certificate of Occupancy for a religious assembly operating at 533-535 Sinclair Frontage Road (APN: 86-44-020 and APN: 86-44-021). Applicant: Syed Mudassir Shah, IRA. Project Planner: Staci Pereira, 586-3278. (Recommendation: Approval with Conditions)

***3 USE PERMIT NO. P-UP2002-17 & S-ZONE AMENDMENT P-SA2002-41:** A request to add a 30 sq. ft. elevator to a legal non-conforming Hillside residence at 971 Calaveras Ridge Road (the subject residence exceeds current impervious coverage limits as it was approved prior to that regulation); (APN: 29-03-0220). Applicant: Lap T. Tang. Project Planner: Steve Burkey, 586-3275. (Recommendation: Approval with Conditions)

***5 PUD NO. 75 ("PARC METROPOLITAN") COMPLIANCE WITH CONDITION OF APPROVAL NO. 3:** A request to add wall signage to the approved detailed landscaping plan for the Parc West apartments at 950 South Main Street (APN: 86-24-024). Applicant: Parc West Associates, LLC. Project Planner: Steve Burkey, 586-3275. (Recommendation: Approval as submitted)

***6 TIME EXTENSION FOR PREVIOUSLY APPROVED HILLSIDE SITE AND ARCHITECTURAL APPROVAL (P-TE2002-1):** A request for an 18-month time extension for a previously approved Hillside Site and Architectural approval at 517 Vista Ridge Drive (APN: 86-24-024). Applicant: Kevin Chiang. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Recommend approval to the City Council)

M/S: Hay/Williams

AYES: 7

NOES: 0

VIII. PUBLIC HEARING

Chair Nitafan opened the public hearing on Agenda Item No. 4.

**1. S-ZONE
AMENDMENT P-
SA2002-42:**
(Applicant: U.S. Signs)

Troy Fujimoto, Assistant Planner, presented a request to amend the existing sign program at the Great Mall to include tenant signage on the existing parking structure and recommended denial.

Commissioner Giordano asked if this sets a precedent to utilize other areas of the parking garage.

Mr. Fujimoto replied that this could open the doors for other signs on the parking structure.

In response to Commissioner Williams' inquiry regarding what is the real reason for this request, Mr. Fujimoto replied that the signage on the existing tenant space is hidden.

Commissioner Williams commented that if the parking structure had been fully developed, this would negate the need for this request.

Commissioner Lalwani asked if the City has billboards and Mr. Fujimoto informed that the City does not.

Commissioner Galang asked if there is any other place for tenant signage and Mr. Fujimoto responded that the only place available is on the Mall building.

Bill Robinett, Applicant, U.S. Signs, mentioned that these signs are important to Media Play because the structure hides Media Play's signs. There is no visibility from any angle of Media Play. He explained his position of economic hardship.

Commissioner Williams asked if Media Play's logo would be added along with the other major tenants on the tower or the big sign in front.

Mr. Robinett replied that the understanding was the Great Mall did not offer any availability with the freestanding sign.

Ms. Heyden asked if the applicant has explored additional tenant direction signage.

Mr. Robinett responded that the problem is the directional signage seems to be small and easily overlooked.

Ms. Heyden asked Mr. Robinett to explain how he sees a customer making a connection with signage on the parking structure to Media Play's tenant location.

Mr. Robinett replied that as a customer walking out of the parking structure, you are walking into the front door of Media Play.

Chair Nitafoan asked staff if there were other alternatives for the applicant.

Mr. Fujimoto responded that in the initial stages, staff recommended locating the signage on areas of the mall façade that weren't blocked by the parking structure.

Chair Nitafoan gave an example of how signage in front of

his office space is not directly located in front.

Chair Nitafan opened the public hearing on Agenda Item No. 4.

There were no speakers from the audience.

Motion to close the public hearing on Agenda Item No. 4.

Close Public Hearing M/S: Giordano/Sandhu
Agenda Item No. 4

AYES: 7

NOES: 0

Commissioner Hay asked the City Attorney whether economic hardship should be considered.

Kit Faubion, City Attorney, mentioned that the distinction is blurred because the purpose of signage is visibility and economics. She advised to look at it as one of the issues and not the sole deciding factor.

Commissioner Lalwani appreciated the applicant's problem, but was in favor of denying the application.

Commissioner Hay noted he is concerned with setting a precedent since people come to the Mall without being able to view all the stores since some stores are interior to the Mall.

Commissioner Williams agreed with Commissioner Hay's comments.

Commissioner Giordano feels that she is in support of the sign amendment, since the parking garage was after the fact and the applicant didn't foresee this problem. Therefore she felt this is a unique situation.

In response to Vice Chair Sandhu's questions regarding whether Media Play will have to pay extra fees to the Mall for signage on the parking structure, Mr. Robinett replied that he doesn't know the answer.

Commissioner Galang asked if it is possible to explore other options to make the sign visible.

Mr. Robinett replied that other options were explored, but were not accepted by Mall Management.

Chair Nitafan stated his opinion that this in essence professional graffiti and that there are alternatives.

Commissioner Hay feels that this application is being treated as a cure for lease, tenant and Mall problems. He

doesn't feel that this cures the problem and that an alternative is needed on the front side of the Mall to solve the problem.

Motion to deny S-Zone Amendment P-SA2002-42 without prejudice.

M/S: Lalwani/Williams

AYES: 6

NOES: 1 (Giordano)

**IX.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:00 p.m. to the next regular meeting of July 10, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning
Commission
Secretary

VERONICA RODRIGUEZ
Recording
Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

July 10, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Sandhu, Galang, Giordano, Hay,
Lalwani, Williams

Absent: None

Staff: Faubion, Fujimoto, Heyden, Pereira

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES
*June 26, 2002***

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of June 26, 2002.

There were no changes to the minutes.

Motion to approve the minutes of June 26, 2002 as submitted.

M/S: Hay/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced that the League of California Cities Conference will be held from October 2-5 in Long Beach, California and to let staff know by July 26, 2002, of Commissioners desire to attend.

Ms. Heyden also announced that Media Play has filed an appeal to the City Council regarding the Planning Commission's recent denial of their signage request.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Lalwani/Hay

AYES: 7

NOES: 0

**VII.
ELECTION OF CHAIR
AND VICE CHAIR**

Tambri Heyden, Secretary of the Planning Commission, opened nominations for Planning Commissioner Chair.

Commissioner Giordano nominated Commissioner Hay for

Chair.

Commissioner Lalwani nominated Chair Nitafan for Chair.

Motion to close nominations for Chair.

M/S: Hay/Giordano

AYES: 7

NOES: 0

Commissioner Hay was elected Planning Commission Chair after 4 votes for Commissioner Hay were cast and 3 votes for former Chair Nitafan were cast.

Ms. Heyden opened nominations for Planning Commission Vice Chair.

Commissioner Nitafan nominated Commissioner Lalwani.

Chair Hay nominated Commissioner Giordano.

Motion to close nominations for Vice Chair.

M/S: Chair/Nitafan

AYES: 7

Commissioner Lalwani was elected Planning Commission Vice Chair after 4 votes for Commissioner Lalwani were cast and 3 votes for Commissioner Giordano were cast.

RECESS

A three minute recess was called to allow the new Chair and Vice Chair to take their seats.

VIII. CONSENT CALENDAR Items Nos. 1 and 3

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

Chair Hay opened the public hearing on Consent Item Nos. 1 and 3.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item No. 3 only. The public hearing for Consent Item No. 1 was to be continued to the August 14, 2002 Planning Commission meeting.

M/S: Nitafan/Lalwani

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item No. 3 with staff recommendation and special conditions noted in the staff report.

***1 USE PERMIT AMENDMENT NO. P-UA2002-8:** A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating, at 231 West Calaveras Boulevard (APN: 022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: Continue to August 14, 2002*)

***3 USE PERMIT NOS. P-UP2002-4 and P-UP2002-15 and "S" ZONE APPROVAL-AMENDMENT P-SA2002-52:**

Collocation proposal to install telecommunications antennas within a new roof-top penthouse structure, plus equipment cabinets installed at ground level, at "Milpitas Health and Fitness," 1000 Jacklin Road (APN: 28-05-015). Applicants: Cingular Wireless and AT&T Wireless. Project Planner: Annelise Judd, 586-3273. (*Recommendation: Approval with Conditions*)

M/S: Giordano/Williams

AYES: 7

NOES: 0

**IX.
PUBLIC HEARING**

Chair Hay reversed Agenda Item No. 2 and 4 since the applicant hadn't yet arrived.

Chair Hay opened the public hearing on Agenda Item No. 4

**1. USE PERMIT NO.
P-UP2002-23:**

(*Applicant: Islamic Research Association, c/o Syed Shah at 473-479 Los Coches*)

Staci Pereira, Junior Planner, presented a request to locate a religious assembly ("church") in the Industrial Park District at 473-479 Los Coches and approve a parking reduction to allow joint use of the existing parking facility. Ms. Pereira recommended approval with conditions and revision to Special Conditions Nos. 1, 5 and 6 as noted as follows:

1. This Use Permit No. UP2002-23 is for the approval of a 1,350 sq. ft. religious assembly use, at 473-475 Los Coches Street. The hours of operation for the assembly gatherings in the assembly area designated on the floor plan are limited to 7:00 PM to Midnight Monday through Friday and 7:00 AM to Midnight Saturday through Sunday.

5. If additional parking spaces are obtained through a joint use parking agreement, the applicant shall post signage at the building entrance to illustrate the location of authorized parking areas (both owned and shared). The sign shall have white lettering on a dark background, reading:

"IRA visitors to park in the following areas during times noted:

- Monday through Friday 7:00 PM to Midnight and Saturday and Sunday 7:00 AM to Midnight = spaces owned by and designated for 473-479 Los Coches, spaces authorized to share (insert shared address numbers) and on-street.*
- All other times = spaces owned by and designated for 473-475 Los Coches and on-street."*

6. This Use Permit UP2002-23 is subject to two, three-month reviews in the next six-month period. The first review shall occur on October 9, 2002 and subsequent review on January 22, 2003. These reviews shall be

performed in order to assess whether or not conflicts in parking demand or hours of operation have occurred and whether modifications of the Use Permit are required. Both reviews shall require a fully noticed public hearing.

Chair Hay opened the public hearing on Agenda Item No. 4.

Mr. Shah, Applicant, requested that the condition not limit the weekend hours to a 1:00 p.m. start time. (The condition above reflects the change requested by the applicant).

Close Public Hearing
Agenda Item No. 4

M/S: Giordano/Nitafan

AYES: 7

NOES: 0

Commissioner Nitafan asked why the applicant is requesting to extend their hours.

Ms. Pereira responded that the applicant would like flexibility to extend hours for some evenings.

Commissioner Nitafan asked about the proximity of this use to residential uses and Ms. Pereira responded that the nearest building is about ½ mile away.

When Vice Chair Lalwani asked why there is a 45-seat limit in the existing location, Mr. Shah responded there is one church in the current location and there will be a total of six churches, not just from Milpitas in the new location.

Vice Chair Lalwani also asked why the name Islamic Research was chosen.

Mr. Shah responded that the name Research reflects the research that they do of their religion.

Commissioner Galang inquired as to the duration of speeches (sermons).

Mr. Shah replied it could vary up to 2 hours.

When asked by Commissioner Galang about the busiest day in Ramadan, Mr. Shah responded that the last 3 days of Ramadan are the busiest.

Vice Chair Lalwani asked if their facility will be open to the public during service and Mr. Shah responded "Yes".

Chair Hay stated that he didn't feel the need to add stipulations on church service hours, but feels in this case it is necessary given that this is an industrial area and that he is concerned about not having a parking standard for churches with no seats. He felt a standard needs to be adopted.

Commissioner Williams concurred.

Commissioner Nitafan inquired about the church's intentions of vacating their premises at Sinclair Frontage

and Ms. Pereira responded that they would be vacating the property in six months.

Motion to approve Use Permit No. P-UP2002-23 with staff recommendations and conditions and revised special conditions Nos. 1, 5 and 6.

M/S: Giordano/Williams

AYES: 7

NOES: 0

Mr. Shah requested clarification on his request for extended hours.

The Planning Commissioners agreed to re-open the public hearing.

Ms. Pereira stated that the applicant requests that the hours be extended from Monday through Friday from 7 p.m. to midnight and Saturdays and Sundays from 7 a.m. to midnight.

Vice Chair Lalwani asked if the neighboring business offices are closed on Saturdays. The applicant responded "Yes".

Close Public Hearing
Agenda Item No. 4

M/S: Giordano/Williams

AYES: 7

NOES: 0

Motion to approve Use Permit No. P-UP2002-23 with staff recommendations and conditions and revised special conditions Nos. 1, 5 and 6 as listed on Page 3 of these minutes.

M/S: Giordano/Williams

AYES: 7

NOES: 0

Ms. Heyden announced that Planning staff are working on a project of preparing a number of Zoning Code amendments that are aligned with recommendations and interpretations that have been made by the Planning Commission and the Planning Division over recent time. The Zoning Code Amendments will be presented at the July 24, 2002 Planning Commission meeting. Staff will attempt to include the Commissioners comment about a parking requirement for churches without seating.

**2. USE PERMIT
AMENDMENT NO.
P-UA2002-9:**
(Applicant: Anh Hong
Saigon., 233 West
Calaveras Boulevard)

Chair Hay opened the public hearing on Agenda Item No. 2. **Troy Fujimoto, Assistant Planner**, presented a request to increase seating from 48 to 80 seats for an existing restaurant (Anh Hong Saigon) and approve a parking reduction in conjunction with the increase in seating, at 233 West Calaveras Boulevard. Mr. Fujimoto recommended approval with conditions, based on the findings indicated in the staff report, and also revised Special Condition No. 11

which reads the following:

*11. To ensure that the garbage enclosure is built and to ensure that the project is in compliance with all approved special conditions of approval, Use Permit Amendment No. P-UA2002-9, shall be reviewed by the Planning Commission in a fully noticed public hearing **within** six (6) months of July 10, 2002.*

Ms. Heyden mentioned that the Code Enforcement task force has been dealing with an unsightly enclosure at this shopping center that obstructs parking and traffic access when it is moved.

Commissioner Galang requested clarification for the take out aspect of the business on Special Condition No. 1.

Mr. Fujimoto clarified that there will be no "take out" service for the restaurant since it is just a "sit down" dinner restaurant.

In response to Commissioner Galang's questions regarding "old COA", Mr. Fujimoto indicated that "old COA" refers to the previous Use Permit conditions of approval.

Chair Nitafan questioned the nine-month old timeframe of the parking supply survey.

Mr. Fujimoto responded that the dates were reviewed by the transportation planner and mentioned revised condition of approval No. 1 that requires a six month review to look at parking.

Commissioner Giordano asked how could the take out aspect affect parking demand.

Mr. Fujimoto responded that there is a different ratio for take out. The floor plan layout is not conducive to take out at this restaurant.

Michael Lee, Applicant, explained that 46 seats are not enough to break even. He discussed the Fire Code limit of 76 seats and agreed to comply. He stated that his trash bins could not be seen because they are in the rear of shopping center and that staff is only requiring the enclosure for beautification purposes.

Vice Chair Lalwani commented on the ratio of 70% profit to 46 seats compared to 80% profit of 76 seats.

Mr. Lee indicated that the purpose of having more seats is so that customers do not have to wait to be seated.

Commissioner Galang asked the applicant if there is outdoor seating and Mr. Lee replied "No".

Commissioner Galang requested clarification on Special Condition No. 4 which reads the following:

4. Washing of containers, equipment, and floor mats shall be conducted in the kitchen area so that wash water may drain into the sanitary sewer.

Mr. Lee responded that the goal is to provide a safe and clean environment.

Vice Chair Lalwani inquired about garbage pick up twice a week.

Mr. Fujimoto responded that there are no standards in regards to garbage pick up. It depends on factors of the business including size and location. Also, BFI will contact the City if there is garbage overflow problems.

Ms. Heyden mentioned that the purpose of the trash enclosure is more than just for aesthetic purposes, but other reasons such as to avoid conflicts with traffic flow, parking and fire exits, as well as to minimize leaking of fluids into the storm drains and designating a permanent location that is easily accessible to BFI and the business without the location moving.

Chair Hay opened the public hearing on Agenda Item No. 2.

There were no speakers from the audience.

Motion to close the public hearing.

Close Public Hearing M/S: Chair/Giordano
Agenda Item No. 2

AYES: 7

NOES: 0

Motion to approve Use Permit No. P-UA2002-9 with staff recommendations and conditions and revised special condition No. 11.

M/S: Galang/Giordano

AYES: 7

NOES: 0

Chair Hay congratulated staff on being proactive with Code Enforcement.

X. NEW BUSINESS

Chair Hay opened Agenda Item No. 5 under New Business.

3. PARKS FACILITY SURVEY P-AD2002- 7: (Staff Contact: Tambri Heyden, Planning Manager)

Tambri Heyden, Planning Manager, discussed the status of 1992 Parks Facility Survey that the Commissioners requested be agendized. The survey recommends that a Parks and Recreation Master Plan be prepared, which has not happened yet. This is also a policy in the General Plan, which is updated every five years, and will be initiated and budgeted during the 2003-2004 fiscal year.

Commissioner Giordano requested that the staff report be forwarded to the Parks and Recreation Commission.

Chair Hay recommended to start the process during the 2002-2003 budget year even though it is not in the CIP due

to the shortage of land.

The Commissioners reached a consensus and Ms. Heyden agreed to pass the information on to the Parks and Recreation Commission (PRCRC).

Chair Hay opened Agenda Item No. 6 under New Business.

**4. PLANNING
COMMISSIONER
SPACE AT CITY HALL
P-AD2002-6:** *(Staff
Contact: Tambri
Heyden, Planning
Manager)*

Tambri Heyden, Planning Manager, discussed the future plans for Planning Commissioner space at the new City Hall and photograph displays of the Commissioners and display cases. Ms. Heyden's research indicated that there is not enough office space for the Commissioners, but lockers will be available. Photographs of the Commissioners are still being decided by the New City Hall Subcommittee. Ms. Heyden requested that the Commissioners indicate what items they would want displayed in a showcase.

Commissioner Williams felt a plaque with all past Commissioner names on it would be best.

Chair Hay agreed, but also felt the case should be ordered for the future.

Consensus was reached to request a plaque to be displayed.

Chair Hay opened Agenda Item No. 7 under New Business.

**5. TENT SALES AND
OUTDOOR EVENTS
P-AD2002-8:** *(Staff
Contact: Tambri
Heyden, Planning
Manager)*

Tambri Heyden, Planning Manager, discussed the existing approval process and review criteria for tent sales and outdoor events as per Resolution No. 453. The Planning Commission Subcommittee can approve events over 3 days and up to 14 days and staff can approve events up to 3 days. She also mentioned the signage, music, "barker", and inflatable sign/balloon problems staff encountered with recent events that had exceeded the scope of their approval, and the lack of a specified minimum review period.

Commissioner Williams commented on the going out of business events at the Great Mall and a person waving a sign near the Crossings at Montague Expressway. He commented that the signs are very distracting.

Chair Hay commented on the used car sales at Calaveras where two different tent sales were competing against each other. The music was very loud and the signs were distracting. He was concerned about safety issues.

Commissioner Nitafo mentioned his concern that staff be given more time to review these applications and suggested that additional guidelines be established.

Consensus was reached and staff and the City Attorney will look at the Zoning Code and Resolution No. 453 to determine what changes can be made and report back at a later date.

XI.
ADJOURNMENT

There being no further business, the meeting was adjourned at 9:00 p.m. to the next regular meeting of July 24, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning
Commission
Secretary

VERONICA RODRIGUEZ
Recording
Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

July 24, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu, Williams

Absent: None

Staff: Faubion, Fujimoto, Heyden, Pereira

**III.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES**

July 10, 2002

Chair Hay called for approval of the minutes of the Planning Commission meeting of July 10, 2002.

There were no changes to the minutes.

Motion to approve the minutes of July 10, 2002 as submitted.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, referred to an e-mail distributed to the Planning Commissioners regarding the new City Hall grand opening event planned for Sunday, October 20th, 2002 from 1 p.m. to 4 p.m. Volunteers from Boards and Commissions should let staff know if they are interested. Commissioner Nitafan volunteered.

Ms. Heyden also announced that the August 14, 2002 Planning Commission meeting will be held at the Fire Administration Office Training Room at 777 South Main Street and asked Chair Hay to make the announcement at the end of tonight's meeting.

Commissioner Nitafan announced that the Filipino Chamber of Commerce of Santa Clara County will host an anniversary dinner at the Radisson Hotel in San Jose for \$45 per person.

Commissioner Sandhu announced that he will not be attending the August 14, 2002 Planning Commission meeting.

Chair Hay attended the Citizen's Emergency Preparedness Advisory Committee meeting on July 18, 2002 regarding Senate Bill 1992 offered by Don Perata. The Senate Bill 1992 is in regards to gas shutoff valves and Chair Hay

passed the information out to staff and the Commission to support the legislation.

VI.
PRESENTATION:
Planning Commission
Chair service plaque to
Dem Nitafan

Chair Hay presented a plaque to former Chair Nitafan in appreciation for his outstanding service to the Milpitas community as Planning Commission Chair from July 2001 to June 2002. Commissioner Nitafan expressed his thanks to the Commission and staff.

VII.
APPROVAL OF
AGENDA

Chair Hay called for approval of the agenda. Staff indicated they had received notice from the applicant of Agenda Item No. 3, P-UA2002-11, Lutong Pinoy Filipino Cuisine Restaurant, requesting a continuance to the September 25, 2002 Planning Commission meeting. Chair Hay asked if staff recommends continuance and staff agreed.

Chair Hay asked the Commissioners to change the recommendation in the packet given the continuance request and also requested to put the item on consent. Commissioner Nitafan questioned if the applicant will have completed their certificate of occupancy by then. Ms. Heyden responded that it is possible, but if not, a further continuance can be requested.

Motion to approve the agenda.

M/S: Vice Chair /Sandhu
AYES: 7
NOES: 0

VIII.
CONSENT CALENDAR
Item Nos. 2, 3, and 4

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

Commissioner Galang requested that Agenda Item No. 4 be added to consent.

Chair Hay requested that Agenda Item No. 3 be added to consent.

Chair Hay opened the public hearing on Consent Item Nos. 2, 3, and 4.

Mrs. Aquino, applicant for Manila Manila Natori, wanted to speak to the owner of the property regarding staff's recommended conditions of approval, but mentioned that the owner is out of the country.

Ms. Heyden clarified that the applicant is leasing a single tenant building, and that staff has recommended numerous improvements to the building that will involve the property owner who has not seen the conditions.

Chair Hay asked if the applicant had any clarifying questions, and requested to remove the item from consent to hear testimony.

Kit Faubion, Attorney, clarified to the applicant that if the item is continued, it would be put off until the next Planning Commission meeting.

Commissioner Williams stated that this should not be on consent given the deliberations.

Commissioner Galang asked if the applicant is agreeable

to all of the conditions of approval and Mr. Aquino responded, "Yes".

**Close Public Hearing
Item Nos. 2 and 4
(Item No. 4
reconsidered later in
the meeting)**

Motion to close the public hearing on Consent Item Nos. 2 and 4. The public hearing for Consent Item No. 3 will be continued to the September 25, 2002 Planning Commission meeting.

M/S: Vice Chair/Giordano
AYES: 7
NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2 and 4 with staff recommendation and special conditions noted in the staff report.

***2 USE PERMIT NO. UP20002-24:** A request to construct a 445 square foot, rear non-conforming residence at 1173 Park View Drive (APN 29-12-006). Applicant: Gary & Emma Eclevia. Project Planner: Staci Pereira, 586-3278. *(Recommendation: Approval with Conditions)*

***3 USE PERMIT NO. P-UA2002-11:** Request to extend business hours, including the hours for serving beer and wine, from 9:00 PM to 2:00 AM on Friday and Saturday nights, and to allow live entertainment (karaoke), at the Lutong Pinoy Filipino Cuisine restaurant, at 1245 Jacklin Road (APN: 29-9-57). Applicant: Lutong Pinoy Filipino Cuisine. Project Planner: Annelise Judd, 586-3273. *(Recommendation: Denial, Continue to the September 25, 2002 meeting)*

***4 USE PERMIT AMENDMENT NO. P-UA2002-16 and "S" ZONE AMENDMENT NO. P-SA2002-56:** A request to add karaoke and dancing (live entertainment) in a nightclub setting to an existing restaurant and bar at 579 South Main Street. (APN: 086-11-012). Applicant: Mario Aquino (Manila-Manila Natori Restaurant). Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Approval with Conditions)*

M/S: Giordano/Sandhu
AYES: 7
NOES: 0

**IX.
PUBLIC HEARING**

Chair Hay opened the public hearing on Agenda Item No. 1.

**1. USE PERMIT
AMENDMENT NO. P-
UA2002-17:**

*(Applicant: Swerdlow
Real Estate Group Inc.,
Comet Drive at the
Great Mall of the Bay
Area)*

Troy Fujimoto, Assistant Planner, presented information regarding approved special condition of approval for Use Permit No. 1167.17 (Century Theaters), review of an updated traffic circulation study that evaluates the impact of closing Comet Drive at the Great Mall of the Bay Area. Mr. Fujimoto recommended approval with conditions and revisions to Special Conditions Nos. 2 and 3.

2. *The Great Mall shall install signs along both sides of Comet Drive that indicate there is no parking permitted on the east side of Comet Drive (due to lack of width to accommodate parking on both sides of Comet Drive) and no parking on the west side of*

Comet Drive from dusk to dawn. Enforcement of no parking shall be performed by Mall security. Signs shall be installed by September 30, 2002 after review and approval of a sign location plan by Traffic Engineering.

3. *If at the time of application for permit, there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full.*

In response to Commissioner Lalwani's about a letter received from Parc Metropolitan, Mr. Fujimoto responded that those letters were given directly to the Commissioners, not to staff.

Commissioner Nitafan questioned Condition No. 2 under findings and special conditions in the staff report and requested it be changed to read the following to correct a typographical error:

2. The closure of Comet Drive will re-direct and increase traffic volumes and associated noise from one part of the Parc Metropolitan development to a different portion of the same development.

Commissioner Nitafan suggested parking signage on Comet Drive.

Vice Chair Lalwani questioned the invoice condition of approval and Mr. Fujimoto responded that it is a new standard condition for informational purposes only.

Chair Hay opened the public hearing.

Fred Reams, Parc Metropolitan resident, mentioned his confusion about the traffic delay in previous traffic reports since the delay has increased. Since the last study has been completed, there are more residents.

Commissioner Lalwani asked if the speed humps on Comet Drive exist and Mr. Fujimoto responded, "Yes".

Shahid Rashid, Parc Metropolitan resident, stated that he has to cross Comet Drive to get to the park and pool, and that cars do not stop at the stop sign.

Adrian Davis, 855 Spirit Walk, Parc Metropolitan resident, wanted to know why no parking is being recommended on Comet Drive. He doesn't see why Fire access would be a problem if Comet Drive were closed. He is in favor of closing Comet drive.

**Close Public
Hearing**
Agenda Item No. 1

Motion to close the public hearing.
M/S: Chair/Vice Chair
AYES: 7
NOES: 0

At the Chair's request, Ms. Heyden clarified that Comet Drive is not wide enough to allow parking on both sides and residents are only allowed to park on one side. In response to the concerns about Mall customers parking on Comet

Drive, she mentioned that the park is usable during day light hours, so posting signs allowing parking on one side of Comet Drive during this time would help the problem with Mall customers.

Mr. Fujimoto stated that in regards to response time at Parc Metropolitan, the Fire Department has a universal key to gain access, but would have to stop and unlock the gates which takes precious seconds.

Commissioner Giordano doesn't see an impact to the Fire Department responding to an emergency at Parc Metropolitan since the fire station is only a couple blocks away.

Commissioner Galang asked if there have been any accidents.

Mr. Fujimoto mentioned that the question about accidents was never asked, but staff has been in continuous contact with the Police Department and accidents on Comet Drive were never brought up.

Commissioner Williams asked why the current traffic undulators, with their broad wide style design to allow vehicles to go over rapidly, were chosen instead of the previous narrower, higher undulators.

Ms. Heyden mentioned that the speed tables (undulators), are proven to be a traffic calmer because drivers driving over a raised area tend to slow down. The Fire Department could use a lock box, but it adds time to emergency response time. She also mentioned that the police sub-station is not open all night long and if Comet Drive were closed, the Police Department would have to take an alternate, longer route increasing their response time, too.

Commissioner Williams mentioned that staff needs to rethink the undulators because the current ones are ineffective.

Commissioner Sandhu requested clarification and asked which area of Comet Drive would be closed.

Mr. Fujimoto replied that the southern-end would restrict Mall patrons from existing through Comet Drive.

Vice Chair Sandhu asked if the gate access key would be given to all residents and Mr. Fujimoto responded that specifics haven't been worked out yet.

Ms. Heyden stated that a number of gate closure designs have been evaluated such as closing the south end only with free access from the north or gates on both ends. Commissioner Nitafan agreed with Commissioner Williams regarding the speed humps needing to be a little bit higher.

Vice Chair Lalwani stated that she empathizes with the Parc Metropolitan residents but feels closure of Comet Drive would transfer the problem to a different area. She also felt that the speed tables should be improved in that area.

Chair Hay asked if staff has data about the parking impact of the new parking structure at the Great Mall.

Joe Oliva, Principal Transportation Planner, mentioned that Hexagon is currently working on a data report.

Chair Hay mentioned that he will not support closure due to the railroad tracks location, but feels that the City needs to find a solution for the residents.

Commissioner Williams felt that the Mall Task Force should continue to look at the speed humps and report back to the Planning Commission.

Commissioner Nitafan suggested revisiting the Comet Drive issue in six months after the signs have been posted and speed humps have been redesigned.

Commissioner Giordano mentioned that she would not support the motion. She felt that it is time to close the access point from the Mall since there are long-term risks to the residents if Comet Drive is kept open.

Motion to approve Use Permit No. P-UA2002-17 and allow Comet Drive to remain open, based on the Findings and Special Conditions of Approval listed in the staff report, with revised Special Conditions No. 2 and 3 listed above, and added Special Condition No. 4 as noted as follows:

4. The Great Mall shall work with City staff to develop a plan to redesign and reconstruct the speed tables and speed humps on Comet Drive.

The Commission also encouraged Parc Metropolitan to install no parking signs within their own development.

M/S: Vice Chair Lalwani/Sandhu

AYES: 6

NOES: 1 (Giordano)

At 8:10 p.m., Commissioner Giordano was excused from the meeting.

X. NEW BUSINESS

ZONING ORDINANCE TEXT AMENDMENT

P-ZT2002-6: (Staff

Contact: Tambri

Heyden, Planning

Manager and Staci

Pereira, Junior Planner)

Ms. Heyden opened the presentation of the Zoning Ordinance Text Amendments Ordinance No. 38.760 and recommended approval to City Council.

Ms. Heyden stated the reason this amendment package arose was that additions to legal, non-conforming structures do not meet new setbacks,. This impact was not felt until additions to these older homes were being requested to update them. Staff proposes these additions be allowed without a use permit if setbacks are met.

Staci Pereira, Junior Planner, presented the other amendments and mentioned that the first several amendments relate to the new Midtown zoning district (Mixed Use and Multi-family High Density). The commercial service definition has been changed due to regulating the

product being assembled on the premises.

Commissioner Nitafan asked why single family detached homes are prohibited in MXD.

Ms. Pereira responded that the purpose of the mixed use is to have residential and commercial within the same area. Minimum density is 21 units per acre, and single family homes do not meet those requirements.

Commissioner Nitafan asked for clarification of what an Internet café is.

Ms. Pereira clarified that it is a restaurant in conjunction with computers for use by customers.

Chair Hay asked why staff recommends prohibiting wireless facilities in the Hillside.

Ms. Pereira responded that for aesthetic reasons, staff felt that this was probably the desire of the Commission.

Consensus was reached to not prohibit them in the Hillside if they are designed as stealth antennas.

Ms. Heyden requested the opportunity to re-look at amendment No. 12 regarding the 30% size limit for additions to require it to be cumulative.

Commissioner Nitafan stated that he was uncomfortable with allowing flea markets in the Town Center as part of farmer's markets.

Chair Hay mentioned amendment No. 20-side yard definition and asked if it would create new nonconforming homes and asked staff to estimate the impact for the next meeting.

Vice Chair Lalwani commented on amendment No. 23, and suggested to contact a local mosque and also find out the size of prayer blankets to help determine parking standards for religious assemblies.

Commissioner Williams asked whether FEMA containers and Wal Mart's cargo containers are covered under the new outdoor screening requirement.

Ms. Heyden replied that cargo containers are, but after asking where to find a FEMA container, Ms. Heyden indicated that staff would have to look at this.

Chair Hay commented on amendment No. 29 – wet bar and sink size, and felt that some size flexibility is needed regarding total sink volume and allowing more than one wet bar.

Commissioner Nitafan asked that car tent sale events be added.

Ms. Heyden mentioned that staff needs more time to carefully address the car sale event topic and has previously agreed to come back to the Commission on this

after working with the City Attorney on it.

Chair Hay announced that the applicant would like to reconsider to open the public hearing on Agenda Item No. 4

Consensus was reached and staff was directed to make the changes discussed.

Motion to reopen the public hearing was made after the applicant requested his item be reconsidered.

M/S: Nitafan/Sandhu
AYES: 6
NOES: 0

ABSTENTATIONS: 1 (Giordano - absent)

XI. PUBLIC HEARING

**USE PERMIT
AMENDMENT NO. P-
UA2002-16 and "S"
ZONE AMENDMENT
NO. P-SA2002-56:**
*(Manila-Manila Natori
Restaurant, 579 South
Main Street)*

Chair Hay opened the public hearing on Agenda Item No. 4.

Mr. Fujimoto presented a request to add karaoke and dancing (live entertainment) in a nightclub setting to an existing restaurant and bar at 579 South Main Street and recommended approval with conditions. He also outlined the numerous improvements that staff is recommending to comply with the Midtown regulations. Mr. Fujimoto stated that the applicant is requesting that special conditions No. 10-17 not be required for another 6 months while being allowed to establish the entertainment and dancing.

Commissioner Williams asked if this is the same building that came a year ago relative to having a two-story complex on the existing site.

Mr. Fujimoto responded that the particular project did come through to the Planning Commissioner and was approved, but the Use Permit expired and the project was never activated.

**Close Public
Hearing**
Agenda Item No. 4

Motion to close the public hearing.
M/S: Sandhu/Vice Chair
AYES: 6
NOES: 0

ABSTENTATIONS: 1 (Giordano - absent)

Ms. Heyden expressed the need for leverage to get compliance with the conditions of approval and suggested a temporary 6-month use permit instead.

Motion to approve a 6-month Temporary Use Permit No. P-UA2002-16 and S-Zone Amendment (P-SA2002-56) with staff recommendations and special conditions noted in the staff report, however revised to reflect granting of a temporary use permit to allow the applicant 6 months to comply with the conditions, after which the use permit expires requiring a new public hearing and permanent use permit review.

M/S: Sandhu/Vice Chair
AYES: 6
NOES: 0

ABSTENTATIONS: 1 (Giordano - absent)

**XII.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:30 p.m. to the next regular meeting of August 14, 2002 to be held at the Fire station.

Respectfully Submitted,

TAMBRI HEYDEN
Planning
Commission
Secretary

VERONICA RODRIGUEZ
Recording
Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

August 14, 2002

I. Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**PLEDGE OF
ALLEGIANCE**

II. Present: Hay, Lalwani, Galang, Giordano, Nitafan, Williams

ROLL CALL

Absent: Sandhu

Staff: Faubion, Fujimoto, Heyden, Pereira, Rush

III. Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.
PUBLIC FORUM There were no speakers from the audience.

IV. Chair Hay called for approval of the minutes of the Planning Commission meeting of July 24, 2002.

APPROVAL OF MINUTES There were no changes to the minutes.

July 24, 2002 **Motion** to approve the minutes of July 24, 2002 as submitted.

M/S: Galang/Lalwani

AYES: 5

NOES: 0

ABSTENTIONS: 2 (Giordano-absent at part of last meeting and Sandhu-absent at this meeting).

V. **Tambri Heyden, Planning Manager**, announced that Marina Rush, Associate Planner, will be on a three-month leave from September to mid-December to adopt a baby.
ANNOUNCEMENTS

Commissioner Giordano announced on behalf of the Rotary Club, the Milpitas Art & Wine Festival to be held Saturday and Sunday on August 17 & 18, 2002 from 10 a.m. to 6 p.m. She mentioned that a dunking tank will include local celebrities such as Tom Wilson, City Manager, and other local candidates.

Commissioner Giordano also mentioned that the Rotary Club will sponsor their 21st annual casino hall night fundraiser on October 19, 2002 being to be held at the San Jose Parkside Hall. There will be a silent auction and a Halloween costume contest. Tickets are \$25.00 and can be bought on ticketweb.com.

Vice Chair Lalwani reiterated the Milpitas Art & Wine Festival and mentioned that it is for free and all are welcomed to attend.

Chair Hay mentioned the Great Mall parking distribution study prepared by Hexagon Consulting Company and Joe Oliva, Principal Transportation Planner, and asked if this would be coming to the Planning Commission in the future.

Ms. Heyden stated that the Mall is required to do an annual study for the next three years and that this report will be coming back to the Planning Commission in January of 2003.

VI.

Chair Hay called for approval of the agenda.

APPROVAL OF

There were no changes to the agenda.

Motion to approve the agenda.

AGENDA

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu)

VII.

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

**CONSENT
CALENDAR**

**Item Nos. 1, 2, 4, 5
and 6**

There were no changes to the consent calendar.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 4, 5 and 6.

There were no speakers from the audience.

Close Public Hearing

**Item Nos. 1, 2, 5
and 6 (Item No. 4
to be continued)**

Motion to close the public hearing on Consent Item Nos. 1, 2, 5 and 6. The public hearing for Consent Item No. 4 will be continued to the September 11, 2002 Planning Commission meeting.

M/S: Nitafan/Williams

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu)

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 4, 5 and 6 with staff recommendation and special conditions noted in the staff report.

***1 USE PERMIT NO. P-UP2002-26 and "S" ZONE
AMENDMENT**

P-SA2002-59: A request to operate a take-out restaurant (VK Foods No. 3) with no seating at 141 Dixon Road (APN: 026-05-019). Applicant: Emily Truong (PJ # 2296). Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: Approval with*

Conditions)

***2 USE PERMIT NO. P-UP2002-27:** A request to locate six temporary trailers for construction materials, storage and offices in the rear parking lot at 1, 3, and 5 Technology Drive (APN 86-43-012 and 013). Applicant: KLA/Tencor (PJ # 2298). Project Planner: Staci Pereira, 586-3278. *(Recommendation: Approval with Conditions)*

***4 USE PERMIT AMENDMENT NO. P-UA2002-8:** A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating at 231 West Calaveras Boulevard (APN: 022-25-041). Applicant: Sung Ho Yoon (PJ # 2245). Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Continue to September 11, 2002)*

***5 REAR YARD OPEN SPACE DETERMINATION IN COMPLIANCE WITH CONDITIONS OF PUD 8A (P-AD2002-9):** A request to construct two additions totaling 562 feet including one 320 square foot addition located within the required 1,300 square foot rear yard open space at 524 Parvin Drive (APN 028-07-111). Applicant: John Haile. Project Planner: Marina Rush, 586-3272. *(Recommendation: Approval of the rear yard open space determination with Conditions and direct staff to amend PUD 8A, Condition No. 16)*

***6 REAR YARD OPEN SPACE DETERMINATION IN COMPLIANCE WITH CONDITIONS OF PUD 6 (P-AD2002-10):** A request to construct a 360 square foot addition located within the required 1,300 square foot rear yard open space at 1282 Sunrise Way (APN 028-07-111). Applicant: All Seasons Remodeling. Project Planner: Marina Rush, 586-3272. *(Recommendation: Approval of the rear yard open space determination with Conditions and direct staff to amend PUD 6, Condition No. 49)*

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu)

VIII.

Chair Hay opened the public hearing on Agenda Item No. 3.

PUBLIC HEARING

**1. ZONING
ORDINANCE TEXT
AMENDMENT P-
ZT2002-6:** *(Staff
Contact: Tambri
Heyden, Planning
Manager and Staci*

Staci Pereira, Junior Planner, presented a discussion of Draft Negative Declaration (EIA No. P-EA2002-6) and Zoning Ordinance Text Amendment (P-ZT2002-6) and recommended approval to the City Council.

*Pereira, Junior
Planner)*

Ms. Pereira mentioned that the matrix outlining all the amendments has been revised since the last meeting, such as language that better defines nonconforming structures as those that do not conform to development standards, and adds language to more clearly define commercial services. She also stated that massage establishments are proposed as prohibited uses in MXD use district, but they are currently allowed in the HS district.

After concern from **Commissioner Nitafan** about the new definition of nonconforming buildings, Ms. Heyden clarified that the proposed ordinance states that a nonconforming use is a use that existed lawfully prior to a new regulation, which made that use no longer permissible. A nonconforming building is one that was constructed lawfully according to the setbacks at the time and new regulations have occurred which no longer allow the building to comply with setbacks or other development standards.

Kit Faubion, City Attorney, stated that the language in the current ordinance is dated and reflects past differences where there wasn't a difference between uses and structures being nonconforming. Staff is basically noting the difference between a nonconforming use and nonconforming structure.

Ms. Pereira explained an amendment for the Midtown Specific Plan that requires any change or expansion in the building that requires 50% more parking, to require improvements that are consistent with design guidelines. She also mentioned that a Use Permit for temporary contractors trailers will no longer be required as long as there is no overnight stay for personnel.

Commissioner **Williams** asked if the temporary use is interpreted to include storage containers such as the ones used at Wal-Mart.

Ms. Heyden responded "No", that this is specifically for contractor field trailers to store their equipment, and any other items that need to be displaced out of the building as part of the construction work.

Ms. Heyden reiterated that the Midtown subcommittee was very careful about quasi-public uses in the Midtown Area due to scarcity of housing and therefore staff has deleted the amendment for religious facilities in R-4.

Ms. Pereira mentioned the amendment for research and development for uses in HS has been deleted.

In response to Chair Hay's question in what prompted the decision, Ms. Heyden replied that an applicant applied for a Commission use determination in 1998 to allow research and development in the HS district which was approved. Staff does not want to open up the doors to research and development since it can include processing and treatment of materials. Also, there is very little HS zoned property in the City.

Ms. Pereira noted Chair Hay's comment from the July 24, 2002 meeting regarding telecommunication antennas in the hillside and mentioned that stealth antennas will be permitted in the hillside, with a use permit.

Ms. Pereira noted Commissioner Nitafan's comments from the previous meeting regarding nonconforming buildings, and mentioned that building additions should not exceed 30% of the area.

In response to Commissioner Nitafan's question, Ms. Heyden responded this amendment would allow a use permit in certain zoning districts for additions to nonconforming buildings not exceeding 50%. If it is larger than 50%, an applicant can not apply for a use permit and would have to reduce the addition, or apply for a variance.

Commissioner Giordano asked staff if they have reviewed the nonconforming data with other cities and Ms. Pereira responded that staff did not.

Ms. Heyden clarified that some cities do not allow additions to nonconforming structures outright. Although the amendment could potentially increase the number of homes that could become nonconforming, it lessens the impact of being a nonconforming home since you can add an addition under certain circumstances without a use permit. The real impact is still the lack of ability to rebuild a building if it is destroyed and the damage is more than 75%.

Chair Hay asked what is the current process that staff uses to determine if a building is nonconforming.

Ms. Pereira mentioned that when an applicant submits plans, staff checks to see if their addition meets side yard requirements.

Ms. Pereira noted that as requested at the last meeting, farmers markets would require a Use Permit, and flea markets are prohibited in the TC district.

Regarding the parking ratio amendment for churches without fixed seating at the last meeting, Ms. Heyden mentioned that staff assumed that prayer rugs were limited to one person per prayer rug, but we've learned that prayer rugs can be shared. Therefore, staff changed the ratio to 1 seat equals 7 square feet.

Commissioner Williams stated that a mosque can use one rug, side by side in rows, but this varies from individuals. He also mentioned that there are also family rugs to group rugs, but no local mosque practices this.

Ms. Pereira noted the kitchen definition discussion from last meeting and stated there could only be one mini-sink and refrigerator in secondary food preparation rooms.

Ms. Heyden also clarified that the purpose of this is not to allow single family dwellings to be converted to multiple family dwellings.

Ms. Faubion mentioned that each additional enclosed food preparation area would be in addition to the primary kitchen area.

Chair Hay opened up the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

Agenda Item No. 3

M/S: Nitafan/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu)

Ms. Pereira noted that staff overlooked discussing the accessory building structure section and adjustments.

Chair Hay announced that he would like to re-open the public hearing on Agenda Item No. 3 so that staff could continue their presentation.

Consensus was reached and staff was directed to finish their presentation.

Motion to reopen the public hearing was made.

M/S: Nitafan/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu)

Ms. Heyden summarized that platforms, concrete slabs, walkways and paved areas are allowed as long as they are no higher than 18 inches above the ground. These are not included in the rear yard coverage, but the intent is to include items that are higher off the ground. However, walkways and paved areas are further exempted but must be 3 feet from the property line.

Chair Hay requested clarification on the 3 feet issue in regards to pools, spas, and air conditioning units, so the amendment and asked what the current ordinance requires.

Ms. Heyden stated that the ordinance is totally silent on pools, spas and air conditioning units, so the amendment requires them to be 3 feet from the property line because noise is an issue with air conditioning units and also emergency access to get in the backyard.

In response to Chair Hay's question regarding what other cities require, Ms. Heyden mentioned that San Jose is requiring between 2 ½ to 3 feet.

Chair Hay asked what is the definition of a landing place.

Ms. Heyden responded that it is an exterior, small but flat concrete slab attached outside a stairway, usually found in multiple story buildings.

Chair Hay reopened up the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

Agenda Item No. 3

M/S: Galang/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu)

Motion to approve Draft Negative Declaration (EIA No. P-EA2002-6) and Zoning Ordinance Text Amendment (P-ZT2002-6) and recommend approval to the City Council.

M/S: Galang/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu)

IX.

There being no further business, the meeting was adjourned at 8:00 p.m. to the next regular meeting of August 28, 2002.

ADJOURNMENT

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

August 28, 2002

I. Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE

II. Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu, Williams

ROLL CALL

Absent: None

Staff: Faubion, Fujimoto, Heyden, Rush

III. Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting. There were no speakers from the audience.

PUBLIC FORUM

IV. Chair Hay called for approval of the minutes of the Planning Commission meeting of August 14, 2002.

APPROVAL OF MINUTES **Commissioner Sandhu** noted that he was not present at the August 14, 2002 meeting and that he did not make any motions at the meeting.

August 14, 2002

Chair Hay asked that staff make the noted corrections and bring back the minutes for approval at the next meeting.

Motion to continue approval of the minutes to the August 24, 2002 meeting.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu-absent at the August 14, 2002 meeting).

V. **Tambri Heyden, Planning Manager,** announced the passing of Irene Augustine, a long-time Milpitas resident and wife of Al Augustine for whom the Augustine Park was named. She noted that memorial services for Mrs. Augustine will be held on Saturday, August 31, 2002 at 11:00 a.m., at Sunnyhills United Methodist Church, 355 Dixon Road in Jones Hall.

ANNOUNCEMENTS

Chair Hay announced that the City Council has appointed Commissioner Giordano to the Los Esteros Critical Energy Subcommittee.

In response to Vice Chair Lalwani's question regarding the role of the subcommittee, Ms. Heyden responded that the subcommittee was formed in response to Council concerns that the energy facility in San Jose will

affect adjacent properties within Milpitas' borders. The Subcommittee will be meeting numerous times within the next six months to agree upon aesthetic and beautification improvements to the facility to address Council concerns.

Commissioner Nitafan asked staff what the status is regarding volunteering for the new City Hall grand opening event.

Ms. Heyden responded that the City Clerk's office is still collecting names of volunteers.

Commissioner Nitafan asked if the Planning Commissioners would be able to tour the new City Hall.

Ms. Heyden said there would be a possibility prior to the start of the September 11, 2002 or the September 25, 2002 meeting.

Consensus was reached to consider a Saturday morning tour.

Commissioner Galang asked if the public was invited to volunteer and Ms. Heyden said that she would find out the information and report back to the Planning Commission.

VI.

Chair Hay called for approval of the agenda.

APPROVAL OF

There were no changes to the agenda.

Motion to approve the agenda.

AGENDA

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

VII.

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

CONSENT CALENDAR

Item No. 2

There were no changes to the consent calendar.

Chair Hay opened the public hearing on Consent Item No. 2.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item No. 2

Item No. 2

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent

Item No. 2 with staff recommendation and special conditions noted in the staff report.

***2 USE PERMIT NO. P-UP2002-19 and S-ZONE AMENDMENT P-SA2002-43:** A request to locate a telecommunication antenna facility at 930 Wrigley Way (APN: 086-29-037). Applicant: PlanCom Inc. for Cingular Wireless (PJ # 2288). Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: Approval with Conditions*)

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

VIII.

Chair Hay opened the public hearing on Agenda Item No. 1.

PUBLIC HEARING

1. VTA BEST PRACTICES MANUAL P-AD2002-12 (*Presentation of the Draft VTA Best Practices Manual. Applicant: VTA, Chris Augenstein*)

Troy Fujimoto, Assistant Planner, introduced **Chris Augenstein** with **VTA**, who presented the draft VTA Best Practices Manual and recommended that the Planning Commission recommend to Council acceptance and support of the Manual's concepts.

Vice Chair Lalwani asked whether the working draft dated March 2002 was the latest version. Mr. Augenstein indicated that it was and that after input from every City Council and Planning Commissioner, a final draft will be prepared that will be taken to the VTA Board.

Commissioner Williams pointed out that the Manual doesn't address land use under aerial rail structures.

Mr. Augenstein noted that some cities have created linear parks in these areas.

Commissioner Nitafan asked what the impact of the VTA Best Practices Manual is.

Ms. Heyden responded that the VTA is looking for support from cities in the County for following and practicing the concepts and strategies in the manual. The expectation is that cities will look at their policies and make appropriate decisions to update their general plan and/or the zoning ordinance to reflect the Manual. Ms. Heyden noted that in general, the Midtown Plan encompasses all of the tenets of the Manual, with the exception of density. The Midtown densities are not as high as those in the Manual.

Mr. Augenstein replied that the detailed density guidelines in the manual are not intended to apply city wide, but are related to specific areas.

Commissioner Giordano recalled the discussion of

granny flat units from the Housing Element and asked if anything would change because of the Manual.

Ms. Heyden responded that the last draft of the Housing Element would be coming back in September or October and that the Planning Commission had previously decided to remove the granny flats policy, therefore staff has not put it back in.

Commissioner Giordano stated that she doesn't understand some of the planning practices recommended in the Manual that are outlined in the staff report.

Mr. Augenstein replied that VTA doesn't make any specific recommendations in the manual about zoning policies. The manual serves as a tool so that the city can look at and choose several planning options.

Commissioner Giordano cited a specific recommendation in the Manual and asked why the VTA would promote attached units in a single family-zoning district.

Mr. Augenstein clarified that a unit could be added to a house and that this unit could be used by a college student, a single mom or teacher, and/or relative. This kind of development would broaden the supply of housing, making housing more attainable by a wider demographic neighborhood.

In response to Commissioner Sandhu's question regarding guidelines for the City of Milpitas to follow, Mr. Augenstein reiterated that the VTA Best Practices Manual is a tool kit for the City to use. The goal of the manual is to expand the range of knowledge and choices that integrate transportation and land use. There is no penalty for not using the manual.

Commissioner Galang asked about the setbacks that were recommended in the Manual that were referenced in the staff report.

Mr. Fujimoto responded that the VTA Best Practices Manual recommends certain setbacks, but noted that in new areas this could be achieved, but that much of the City is built out so the manual would have little impact in regards to setbacks in the City.

Chair Hay asked how the City could benefit financially from VTA's funds.

Mr. Augenstein replied that BART and light rail follow a robust planning cycle on a competitive basis. Milpitas has a lot of potential to receive capital improvement and grant funds related to streetscape enhancements.

Chair Hay opened the public hearing.

Mr. William Connor, 1515 N. Milpitas Blvd., talked about the benefits of electro magnetic rail that he felt the VTA should consider before making any decisions.

Chair Hay suggested that Mr. Connor talk to staff about his idea.

Close Public Hearing

Motion to close the public hearing.

Agenda Item No. 1

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Chair Hay mentioned that the Transportation Subcommittee had an opportunity to implement in the Midtown area the kind of best practices referenced in the manual. He complimented the VTA for their regional approach that may help the City move forward to address congestion problems, but hopes that the final manual will include more flexibility for the City.

Motion to recommend to the City Council support of the concepts of the VTA Best Practices manual.

M/S: Nitafan/Galang

AYES: 7

NOES: 0

**2. USE PERMIT NO.
P-UP2002-21 and
"S" ZONE
APPROVAL-
AMENDMENT**

**P-SA2002-45: (725
Alder Drive, Applicant:
AT&T Wireless)**

Chair Hay opened the public hearing on Agenda Item No. 3.

Marina Rush, Associate Planner, presented a request to install telecommunications antennas on the building facade plus equipment cabinets installed within the third floor of Cisco Building No. 20, 725 Alder Drive, and recommended denial based on the findings in the staff report.

Commissioner Williams requested that the applicant discuss what options AT&T has considered.

Applicant, Bob Gundermann with AT&T, stated that they have explored several other sites for the antennas to be located, but were rejected by the property owners and the companies because none of them wanted the exterior of their building altered.

Commissioner Williams asked staff if they would entertain the idea of looking at dummy antennas on the other sides of the building to match the antenna.

Ms. Heyden indicated that that is a possibility but noted that telecommunication antennas are market driven and because of that, for the right offer, building owners become more interested in building mounted antennas. However, alternatives that can be evaluated and considered would be flagpoles, artwork, and statuary to get the needed height. Regarding safety, the Telecommunications Commission has raised this issue,

which the Fire Department has been addressing with applicants to ensure the safety of emergency personnel and their awareness of antenna locations.

Commissioner Nitafan noted that the dummy antennas would not be the same architectural design as the rest of the building.

Chair Hay opened the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

Agenda Item No. 3

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

Commissioner Giordano made a motion to recommend denial, stating that this sets a precedence since no screening of the antenna is proposed which is contrary of the standard the Commission has achieved with other antenna approvals.

Vice Chair Lalwani noted how the applicant worked really hard trying to find other options but believes that there are alternative solutions.

Commissioner Williams disagreed with the motion stating that dummy units would make the antennas acceptable.

Commissioner Nitafan agreed with the motion because if approved, he felt it would be hard to regain the Commission's standard in the future with other new antennas.

Chair Hay commented that the City has set high standards for antennas, and as a result, there have been some creative proposals that provide alternatives.

Motion to recommend denial for Use Permit No. P-UP2002-21 and "S" Zone Approval Amendment No. P-SA2002-45.

M/S: Giordano/Sandhu

AYES: 6

NOES: 1 (Williams)

IX.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:00 p.m. to the next regular meeting of September 11, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission

Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

September 11, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
MOMENT OF SILENCE**

Chair Hay called for a moment of silence remembering the tragic events of September 11, 2001.

Commissioner Nitafan asked that those who gave their lives in the military be remembered and to eliminate terrorism in the world.

**III.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu, Williams

Absent

Staff: Burkey, Faubion, Fujimoto

**IV.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting. There were no speakers from the audience.

**V.
APPROVAL OF
MINUTES**

*August 14, 2002 and
August 28, 2002*

Chair Hay called for approval of the minutes of the Planning Commission meeting of August 14, 2002 and August 28, 2002.

Commissioner Nitafan referenced page 3 of the August 28, 2002 minutes and corrected the following sentence:

Commissioner Nitafan asked what the impact of the VTA Best Practices Manual is.

Motion to approve the minutes of August 14, 2002 and August 28, 2002 with the corrective change.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu-for the August 14, 2002 meeting only)

**VI.
ANNOUNCEMENTS**

Steve Burkey, Associate Planner, who was representing Tambri Heyden, Planning Manager, announced that the September 25, 2002 Planning Commission meeting will be held at the Fire Administration Office Training Room at 777 South Main Street and asked Chair Hay to make the announcement at the end of tonight's meeting.

Mr. Burkey also referenced a flier that was passed

out to the Planning Commissioners about a Town Hall meeting, sponsored by the Community Advisory Commission, that will be held on October 3, 2002 at the Milpitas Community Center at 7:00 p.m.

Commissioner Giordano announced that she attended the Silicon Valley Manufacturing Group Housing Leadership Council that encompassed city officials. VTA presented their "Best Practices Manual" and shared ideas and challenges that the different cities are going through as we expand regionally from a suburban society to an urban society. She also mentioned how East Palo reviewed their Housing Element six months after and suggested that the City of Milpitas do the same, instead of waiting a full five years.

Commissioner Giordano also mentioned her concern that certain commercial buildings have not removed temporary fencing put up around the corners, particularly sites off of I-680 and Jacklin Road, a site in front of Golfland, and also another commercial site off of Calaveras and Park Victoria Drive. She felt that once the final building permits are issued the fences should be removed.

Mr. Burkey clarified that the fences should be removed after the permits are issued and stated that staff would look into the matter and report back to the Planning Commission.

Chair Hay requested that staff provide a report at the next meeting.

Vice Chair Lalwani attended the Silicon Valley Manufacturing Group meeting as well and stated that cities all have the same problem with traffic and housing. She felt that an element of growth in any City would bring those types of problems.

Commissioner Nitafan requested confirmation about the Planning Commission tour and asked if the tour will be scheduled on September 25, 2002 or on September 28, 2002. He also asked if the public would be included.

Mr. Burkey said he would check on the dates and confirm with the Planning Commission.

VII. APPROVAL OF AGENDA

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

VIII. CONSENT CALENDAR Item Nos. 1, 2, 3, 4, 5 and 6.

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

There were no changes to add or remove an item from the consent calendar.

Mr. Burkey referenced changes to conditions of approval to Item Nos. 2 and 3 and mentioned that a memorandum was distributed to the Planning Commission.

Commissioner Nitafan commented on the hours of operation to Item No. 2, and mentioned that there is not a consistency with the hours under the special conditions.

Troy Fujimoto, Assistant Planner, replied that the applicant wanted flexibility with the hours of operation to extend late into the night.

Mr. Burkey added that there shouldn't be any concerns since the location is in an industrial park area, and not near any residences.

Commissioner Nitafan also questioned the hours of operation for Item No. 3.

Annelise Judd, Assistant Planner, responded that the applicant also wanted to allow flexibility for any tutoring tenant in that space.

Commissioner Nitafan asked if that is standard practice.

Mr. Burkey mentioned that staff only occasionally gets involved in hours of operation, but leaves it up to the applicant since a Use Permit runs with the land.

Commissioner Nitafan voiced his concerns that there should be consistency with hours of operation.

Chair Hay suggested removing the hours of operation on Item No. 3 and Mr. Burkey agreed.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 3, 4, 5 and 6.

There were no speakers from the audience.

**Close Public Hearing
Item No. 2, 3 and 4**

Motion to close the public hearing on Consent Item Nos. 2, 3, and 4. Consent Item Nos. 1, 5 and 6 were continued to the October 9, 2002 Planning Commission meeting.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 3, 4, 5 and 6 with staff recommendation and special conditions noted in the staff report, as well as revised conditions for Item Nos. 2 and 3 as follows:

Item No. 2: (Baskin Robbins/TOGO's)

*14. Washing of containers and equipment shall be conducted in the kitchen or trash enclosure area so that wash water may drain into the sanitary sewer.
(P)*

Item No. 2 (Starbuck's)

2. The maximum seating for this restaurant is 38 seats, as stated on plans dated September 11, 2002. The maximum take-out area is 393 square feet. (P)

3. Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8 ½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum seating: 38, as per Use Permit No. P-UP2002-25 granted by the Planning Commission on September 11, 2002." (P)

*14. Washing of containers and equipment shall be conducted in the kitchen or trash enclosure area so that wash water may drain into the sanitary sewer.
(P)*

Item No. 3 (Tutoring Club)

Recommended Special Condition (s).

5. The applicant is responsible for the solid waste and recycling collection service. The solid waste service shall be evaluated by BFI Commercial Representative after the applicant has started its business to determine an adequate level of service. If it is determined to be inadequate, the applicant shall increase the service to a level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)

Note (s) to applicant (It is anticipated that the following will apply to subsequent actions regarding this property):

- 1. It is the responsibility of the developer to obtain any necessary encroachment permits or approvals from affected agencies and private properties. Copies of approvals or permits from other agencies or private properties must be submitted to the City of Milpitas Engineering Division.*
- 2. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit.*

and deletion of the condition regarding hours of operation for Item No. 3.

***1 USE PERMIT AMENDMENT NO. P-UA2002-8:**

A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating at 231 West Calaveras Boulevard (APN: 022-25-041). Applicant: Sung Ho Yoon (PJ # 2245). Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Continue to October 9, 2002)*

***2 USE PERMIT NOS. P-UP2002-22 & P-UP2002-25 and "S" ZONE AMENDMENT NOS. P-SA2002-46 & P-SA2002-47:**

A request to convert an existing restaurant with drive-thru window into a two-tenant building for Starbuck's (PJ # 2293), Baskin & Robbins and TOGO's (PJ # 2294), including the addition of another drive-thru window at 1541 California Circle (APN: 022-37-002). Applicant: Tait & Associates Inc. Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Approval with Conditions)*

***3 USE PERMIT NO. P-UP2002-30 and "S" ZONE AMENDMENT NO. P-SA2002-61:**

A request to operate a tutoring business in the Neighborhood Commercial district, at 487 Jacklin Road. The proposed tenant space is within the southeasterly pad building at Foothill Square shopping center (APN: 26-28-27). Applicant: Larry Smith for the Tutoring Club (PJ # 2300). Project Planner: Annelise Judd, 586-3273. *(Recommendation: Approval with Conditions)*

***4 USE PERMIT NO. P-UP2002-29:**

Request to operate a video store with sales and rentals at 1347 Jacklin Road (APN 029-05-040). Applicant: Steven Luk (PJ # 2301). Project Planner: Staci Pereira, 586-3278. *(Recommendation: Approval with Conditions)*

***5 USE PERMIT AMENDMENT NO. P-UA2002-20 and "S" ZONE AMENDMENT NO. P-SA2002-69:**

Request to add 12 outdoor seats to the Burrito Express Restaurant at 275 Jacklin Road in Foothill Shopping Center (APN 026-28-029). Applicant: Shapell Industries (PJ # 2299). Project Planner: Staci Pereira, 586-3278. *(Recommendation: Continue to October 9, 2002)*

***6 USE PERMIT NO. P-UP2002-13 and "S" ZONE APPLICATION NO. P-SZ2002-5:**

A request to construct a 11,400 square foot church, 5,081 square foot community building, and a 678 square foot residence, located at 1600 South Main Street (APN: 086-22-038). Applicant: Saint Gabriel Church Ethiopian Orthodox (PJ # 3143). Project Planner: Marina Rush, 586-3272. *(Recommendation: Continue to October 9, 2002)*

AYES: 7

NOES: 0

IX.
ADJOURNMENT

There being no further business, the meeting was adjourned at 7:30 p.m. to the next regular meeting of September 25, 2002 to be held at the Fire Administration Office Training Room at 777 South Main Street. The meeting was adjourned in memory of those who gave their lives on September 11, 2001 and the fight against terrorism.

Respectfully Submitted,

Steve Burkey
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

September 25, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu, Williams

Absent None

Staff: Fujimoto, Heyden, Judd and Reliford

**III.
CANCELLATION OF THE
NOVEMBER 27, 2002
PLANNING
COMMISSION
MEETING**

Tambri Heyden, Planning Manager, indicated that since the November 27, 2002 Planning Commission meeting is on the eve of Thanksgiving, she suggested that the Planning Commission might want to cancel the meeting.

The Planning Commissioners agreed unanimously to cancel the meeting.

**IV.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Lupe Ortiz, 2001 Wellington Drive, Community Advisory Commission (CAC) member, invited the community to attend the October 3, 2002 CAC Town Hall meeting at 7:00 p.m. at the Community Center auditorium.

Chair Hay thanked the CAC for their efforts in organizing the second annual Town Hall meeting.

**V.
APPROVAL OF
MINUTES**

September 11, 2002

Chair Hay called for approval of the minutes of the Planning Commission meeting of September 11, 2002.

There were no changes to the minutes.

Motion to approve the minutes of September 11, 2002 as submitted.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**VI.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, reminded the Planning Commission of the special Planning Commission tour of the new City Hall that will be held on Saturday, September 28, 2002 beginning at 11 a.m. in the Community Center, Rooms 7 & 8.

Ms. Heyden also announced that staff received notice from the applicant of the nightclub, requesting continuance to the October 23, 2002 Planning Commission meeting.

Commissioner Galang announced that the Northern California Association is inviting the community to an election of officers celebration on September 28, 2002 at the South San Francisco Conference Center.

Commissioner Giordano announced that she attended the Silicon Valley Projections meeting and brought information to share with the Planning Commission.

**VII.
APPROVAL OF
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.
M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VIII.
CONSENT CALENDAR
Item Nos. 2, 3, 5 and
6.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

Chair Hay requested that Agenda Item No. 3 be added to consent with staff recommendation to continue to October 23, 2002.

Commissioner Giordano commented that she will be abstaining on Agenda Item No. 2.

Commissioner Galang requested that Agenda Item No. 7 be added to consent.

Chair Hay commented that there are speakers from the audience for Agenda Item No. 7.

Chair Hay opened the public hearing on Consent Item Nos. 2, 3, 5 and 6.

There were no speakers from the audience.

**Close Public Hearing
Item No. 2 only**

Motion to close the public hearing on Consent Item No. 2 only. Consent Item Nos. 5 and 6 were continued to the October 9, 2002 Planning Commission

meeting and Consent Item No. 3 was continued to the October 23, 2002 Planning Commission meeting.

M/S: Nitafan/Sandhu

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Giordano-abstained on Item No. 2 only)

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 5 and 6 with staff recommendation and special conditions noted in the staff report.

***2 TIME EXTENSION FOR HILLSIDE "S" ZONE APPLICATION REVIEW P-TE2002-4:** Request for 18-month time extension for single-family hillside residence, including review of retaining walls and request for building color scheme change at 600 Evans Road (APN 29-30-17). Applicant: Chi Mai. Project Planner: Annelise Judd, 586-3273. *(Recommendation: Recommend to City Council Approval with Conditions)*

***3 S-ZONE AMENDMENT P-SA2002-65 & USE PERMIT NO. P-UP2002-32:** A request to construct a 12,000-square foot nightclub within the Great Mall of the Bay Area, with food service and full service bars serving all types of alcohol with hours of 4:00PM to 3:00AM at 1100 Great Mall Drive (APN: 086-24-055). Applicant: Big Sky Entertainment II. Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Continue to October 23, 2002)*

***5 USE PERMIT NO. P-UP2002-23:** Request to operate a cafe and snack bar, including beer and wine sales, at 538 Barber Lane (APN 086-01-043). Applicant: Lei Bin-Ling for Bubble Act Cafe. Project Planner: Staci Pereira, 586-3278. *(Recommendation: Continue to October 9, 2002).*

***6 PLANNED UNIT DEVELOPMENT NO. P-PD2002-2 & EIA No. P-EA2002-10:** Request to replace an existing residence, legally nonconforming due to its location within the Crestline Zone of Protection and a southern setback less than 40 feet, on 4.6 acres at 1000 Country Club Drive (APN 29-03-014) with a new 11,200+/- sq ft. house also located partially within the Crestline Zone of Protection and a reduced southern setback. Applicant: Christina Martinez. Project Planner: Steve Burkey, 586-3275. *(Recommendation: Continue to October 9, 2002)*

M/S: Nitafan/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Giordano-abstained on Item No. 2 only)

IX. PUBLIC HEARINGS

Chair Hay opened the public hearing on Agenda Item No. 1.

1. GENERAL PLAN HOUSING ELEMENT AMENDMENT (P-GP2002-6) AND NEGATIVE DECLARATION (P-EA2002-7).

*(Applicant: City of
Milpitas and Bay Area
Economics (BAE)).*

Commissioner Nitafan noted that he will be abstaining from voting on this item.

Commissioner Giordano noted that she received a written determination from the FPDC and that she does not have a conflict of interest on this item and will be voting on this item.

Felix Reliford, Principal Housing Planner, gave a presentation summarizing the comments that were received from HCD's review of the first draft and what has been revised in the first draft to address the state's comments that led to the production of the current Housing Element draft. Mr. Reliford recommended approval of the General Plan Housing Element Amendment and forwarding public comments on the Negative Declaration to the City Council.

Commissioner Giordano expressed satisfaction regarding the Manor survey that she had requested and asked how often the Housing Element must be updated.

Barry Miller, Bay Area Economics (BAE) Consultant, noted that Housing Elements must be updated when ABAG publishes the new housing numbers, which is typically every 5 years.

Commissioner Giordano recommended that staff provide an annual status report of Housing Element accomplishments to the Planning Commission like the one East Palo Alto has done.

Mr. Reliford noted that the update could be provided yearly.

Commissioner Giordano asked how the latest Housing Element draft addresses the HCD comments regarding meeting housing needs for all income groups.

Mr. Reliford stated that the City tried to reach a goal of ABAG's projected numbers that they published.

Mr. Miller addressed in detail the Housing Element Appendix that provides information on each housing opportunity site.

Mr. Reliford reiterated that staff has discussed with HCD this manner of addressing their comments and they were satisfied.

Commissioner Giordano asked how staff addressed HCD's land use control site requirements comments.

Mr. Miller referenced page 57 of the Housing Element and mentioned that two paragraphs were added that discuss the urban growth boundary and how this has impacted the market.

Chair Hay asked what will staff do if they have not received the letter of clearance from HCD before the final Housing Element goes to Council.

Mr. Reliford responded that the item will be continued at the Council meeting if no letter from HCD is received.

Commissioner Williams asked whether financial institutions will use the Housing Element.

Mr. Reliford responded, "Yes," but more than likely only the housing developers will find it useful.

Commissioner Williams restated his concern regarding the small amount of survey data collected.

Mr. Reliford noted that the survey done was a windshield survey and that our City, given its relatively young age, does not have a large amount of deteriorated housing so the survey size was appropriate.

After a question from Chair Hay, Mr. Reliford noted that 87% of housing need capacity will be satisfied in the Midtown area and at the levels to meet ABAG projections.

Mr. Miller noted that no penalties are levied by HCD so long as the City provides the capacity. No penalties are levied if the market doesn't provide the stock in the capacity area. If the capacity is not provided, penalties can include such things as loss of gas tax, invalidation of the City's General Plan, a development moratorium, CDBG funds jeopardized and the threat of lawsuit. If a Housing Element is not certified, access to housing funds are at risk.

Chair Hay felt it is a good idea for staff to prepare annual reports.

Commissioner Giordano mentioned the Housing Trust Bill signed by the Governor and Mr. Reliford informed how those funds would be allocated.

Chair Hay opened the public hearing on Agenda Item No. 1.

Richard Ruth, resident on Quail Drive, disputed staff's comments regarding HCD's desire for density and stated that the City has not provided for capacity for their share of housing for above-moderate income households. He expressed that the urban growth boundary is misleading since the hillside is not in an urban area. Mr. Ruth contended for this that the Housing Element is not meeting HCD's objectives and

the City's anti-growth policies exacerbate the housing crisis.

Heidi Wolfried, resident and representative of the Housing Action Coalition, mentioned that there is little enforcement action available to comply with the Housing Element which has caused the housing crisis and the proposed bill is intended to help the crisis.

**Close Public Hearing
on Agenda Item No. 1**

Motion to close the public hearing on Agenda Item No. 1.

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Commissioner Nitafan who abstained from voting)

Motion to recommend approval of the General Plan Housing Element Amendment (P-GP2002-6 and Negative Declaration (P-EA2002-7) and forward public comments on the Negative Declaration to the City Council, with an annual update report to the Planning Commission.

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Commissioner Nitafan who abstained from voting)

**2.
USE PERMIT
AMENDMENT NO. P-
UA2002-18 & EIA NO.
P-EA2002-8:**

*(Applicant: Swerdlow
Real Estate Group)*

Chair Hay stated that there is no need for a staff presentation and felt that freezing an existing floor area at the Mall was not a good solution to mitigate traffic and parking impacts.

Commissioner Nitafan stated that this approval would remove the City's leverage.

Based on Commissioner Nitafan's comments, Chair Hay requested that staff give a brief presentation.

Troy Fujimoto, Assistant Planner, gave a presentation on a request to use 60,000 square feet of gross leasable area within the Great Mall of the Bay Area building that was required to remain vacant as per conditions of approval for a 1999 parking reduction request and a 2000 Home Depot use permit approval. Mr. Fujimoto recommended adoption of the Mitigated Negative Declaration and recommended approval of the request with conditions.

Mr. Fujimoto noted that the ULI shared parking study has been supplemented with actual survey data from last year to verify that this request with conditions of approval will have no impacts.

Vice Chair Lalwani asked where the 60,000 square feet of gross leasable area is located.

Mr. Fujimoto responded that it is scattered throughout the Mall.

Commissioner Galang asked if Parc Metro knows about the Comet Drive speed hump condition and Mr. Fujimoto replied that it was discussed with Parc Metro at the Comet Drive closure public hearing where they were present.

Ms. Heyden commented that staff added this condition because when it was discussed at the Comet Drive closure hearing, the timeframe was left open-ended.

Chair Hay informed the Commission that the Council voted 4-1 that Comet Drive stay open.

Commissioner Nitafan expressed that the 655 parking spaces referenced will not help traffic matters.

Mr. Fujimoto explained that the parking reduction of 355 parking stalls is supportable based on the actual data that was part of the parking surveys of the previous holiday season which indicated adequate supply to cover this reduction during non-holiday times.

Chair Hay opened the public hearing on Agenda Item No. 4.

There were no speakers from the audience.

**Close Public Hearing
on Agenda Item No. 4**

Motion to close the public hearing on Agenda Item No. 4.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Nitafan made a **motion** to deny Use Permit Amendment No. P-UA2002-18 and EIA No. P-EA2002-8 due to reducing the number of parking stalls which would cause more traffic. The motion died for lack of a second.

Motion to approve Use Permit Amendment No. P-UA2002-18 and EIA No. P-EA2002-8 for 60,000 square feet of gross leasable area within the Great Mall of the Bay Area building that was required to remain vacant as per conditions of approval for a 1999 parking reduction request and a 2000 Home Depot use permit

approval and to adopt a Mitigated Negative Declaration with staff recommendations.

M/S: Giordano/Galang

AYES: 6

NOES: 1 (Nitafan)

3.
USE PERMIT
AMENDMENT P-
UA2002-11 (*Applicant:*
Jimmy Ereso for Lutong
Pinoy Filipino Cuisine,
1245 Jacklin Road)

Chair Hay opened the public hearing on Agenda Item No. 7.

Annelise Judd, Assistant Planner, gave a presentation on a request to extend business hours and offer live entertainment (karaoke) at the Lutong Pinoy Filipino Cuisine

Restaurant at 1245 Jacklin Road and recommended approval with conditions based on the findings included in the staff report, but mentioned that staff does have concerns with the late night hours based on the location near residences.

In response to **Commissioner Sandhu**, Ms. Judd noted that the restaurant is to the east of Golfland.

Commissioner Galang asked how far is the back door of the restaurant to the residential area.

Ms. Judd responded that it is 15 feet from the back of the commercial building to the rear of the residences.

Commissioner Nitafan needed clarification on the hours of operation.

Ms. Judd responded that the applicant wants to stay open until 2 a.m. on Friday and Saturday nights to include food service and karaoke

Commissioner Giordano recalled the karaoke entertainment at A Touch of Aloha restaurant, which is similar to the Lutong Pinoy Filipino Cuisine Restaurant and asked how far A Touch of Aloha restaurant was from nearby residences.

Ms. Judd responded 35 feet from the back door to the front of the residents' property line.
Commissioner Giordano recalled two comments from A Touch of Aloha restaurant and of residents complaining from the Homeowners Association and Ms. Judd responded that that was correct.

Vice Chair Lalwani asked what the difference was between Town Center zoning and Neighborhood Commercial zoning.

Ms. Judd responded that the difference is the purpose and intent of the districts and the allowed and conditional uses of the district. The Town Center is

the cultural and entertainment center of the City, whereas the neighborhood commercial district serves the immediate needs of the neighborhood.

Commissioner Nitafan asked if it matters that the center was there first before the residents and Ms. Judd responded "No".

Applicant, Jimmy Ereso, explained that he is trying to address a community need of workers that need a restaurant and entertainment establishment after they come home from work.

Commissioner Williams asked how patron noise levels would be controlled so as not to exceed the tested music levels.

Mr. Ereso responded that he would manage them by approaching noisy customers.

Commissioner Sandhu asked if there would be a dance floor and security personnel and Mr. Ereso responded "No".

Chair Hay opened the public hearing on Agenda Item No. 7.

Anthony Tobacco, 319 Daniel Court, President of the Park Victoria Home Owners Association, submitted a petition of 53 names against the use permit and noted that staff has verified that the restaurant has no sound proofing.

Commissioner Nitafan asked if the HOA would support the reduced hours to midnight and Mr. Tobacco responded that he didn't think so.

Ms. Heyden noted that reduced hours requested by the applicant was not re-noticed.

Commissioner Giordano asked for the distance from the restaurant to petitioners on Daniel Court and Ms. Judd responded that it is over 100 feet.

Concerned resident (name inaudible), stressed that this is not a neighborhood for a bar and entertainment and that there is no way to control noise from customers.

Commissioner Nitafan stated that staff is recommending a six month review to monitor noise complaints.

Luke Hamilton, 1223 Daniel Court, noted that residents have detected an increase in noise since the restaurant opened in April. He described other noise issues with the center like parking lot sweepers and BFI emptying garbage at 4:30 a.m. He stated that he would not have a problem with reduced hours to midnight.

Kathy Cristo, 1165 Kelly Drive, who is the applicant's bookkeeper who lives in the neighborhood felt that the applicant should be given a chance.

Heidi Wolfried, works at 1323 Jacklin Road, felt that the neighbors might be overreacting and that the business might enhance the neighborhood.

Dan Levenson, 375 Vista Ridge Road, who owns a property on Daniel Court, expressed his concern with noise traveling across Jacklin Road and complaints he has received from his tenant.

Mr. Perez, 1239 Daniel Court, felt that the problem is really the missing sound wall at Park Victoria townhomes that has not been replaced.

Commissioner Nitafan concluded that the noise is from traffic and not the center.

Mr. La, 1182 Fox Hollow Court, noted his objection to the use permit and echoed comments already made.

Priscilla Velazquez, concerned resident, stated her concern that the sound is coming from the traffic and the fact that there is no soundwall.

**Close Public Hearing
on Agenda Item No. 7**

Motion to close the public hearing on Agenda Item No. 7.
M/S: Sandhu/Galang

AYES: 7

NOES: 0

After a question from Commissioner Giordano, Ms. Judd indicated that the Aloha Restaurant is open until 9:00 p.m.

Commissioner Giordano asked what was staff's rationale for recommending closing the restaurant at midnight.

Ms. Judd explained that she looked at past use permits approved by the Planning Commission, even those uses that are not identical.

Commissioner Sandhu felt that this use is not appropriate in the area.

Commissioner Williams used Blockbuster for a comparison and asked if it was the one that the acoustics measurements were performed for.

Ms. Judd could not verify this.

Vice Chair Lalwani mentioned that she doesn't feel comfortable with disturbing the neighborhood, which from her experience, seems very quiet.

Commissioner Giordano stated that the sound wall seems to be the real problem.

Vice Chair Lalwani mentioned she will not support the karaoke until 11:00 p.m.

Chair Hay stated he will support the motion because he has visited the property and feels that the six month review can be used to determine and address any problems that arise.

Commissioner Williams noted that activity that occurs after karaoke hours is where he thinks the problems will occur.

Commissioner Sandhu stated that it is difficult to address problems even with a six month review and that he agrees with Commissioner Williams about the source of the noise.

Vice Chair Lalwani concluded that she would support karaoke until 10:00 p.m., not to 11:00 p.m.

Motion to approve Use Permit Amendment P-UA2002-11 to reduce hours to 11:00 p.m. and 9 p.m. for alcohol and a six month review performed by the Planning Commission.

M/S: Giordano/Galang

AYES: 5

NOES: 2 (Sandhu and Lalwani)

Chair Hay requested that the applicant establish rapport with neighbors in advance of the six month review and also requested that staff contact the property owner about the leaf blowers and BFI noise and report back to the Planning Commission and for staff to report back 30 to 45 days about the noise solution. He also requested that the neighbors be notified of the meeting when staff reports back.

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:00 p.m. to the next regular meeting of October 9, 2002.

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

September 28, 2002

**I.
CALL TO ORDER**

Chair Hay called the special meeting to order at 11:00 A.M.

**II.
ROLL CALL**

Present: Hay, Lalwani, Nitafan, Sandhu and Williams
Absent Galang and Giordano
Staff: Heyden

**III.
TOUR OF NEW CITY
HALL**

Tambri Heyden, Planning Manager, introduced **Mark Rogge**, member of the New City Hall Project Management team who gave a tour of the new City Hall.

**IV.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 12:30 p.m. to the next regular meeting of October 9, 2002.

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 9, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu, Williams

Absent: None

Staff: Fujimoto, Heyden, Judd and Reliford

**III.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Julie Cherie, 2312 Macy Drive, representing Milpitas Alliance for the Arts, described the Art in the Park project, which involves installing an art piece in every park in Milpitas. The Alliance started at Augustine Park and met with neighbors to decide which type of art piece they would like in the park. The Alliance gathered proposals from different artists and hosts a Gala fundraiser once a year. Each project bids for \$15,000. The next project will be Murphy park.

Larry Voellger, 689 Carta Place, described the three art piece models that are being considered for the selection at Murphy Park; an arbor bench, a ceramic bench and totem poles.

Commissioner Giordano made comments to Robin Hayes with the Milpitas Alliance of the Arts and Ms. Cherie responded that she works for the Milpitas Arts Commission regarding a "statue" piece for the entry to City Hall.

Ms. Cherie also mentioned that the Milpitas Arts Commission is pushing for public art work at the new Civic Center. There will be a surprise presentation at the Grand Opening on October 20, 2002.

Chair Hay complimented the Alliance for the "sundial", a beautiful piece of art.

**IV.
APPROVAL OF
MINUTES
September 25, 2002
and September 28,
2002**

Chair Hay called for approval of the minutes of the Planning Commission meeting of September 25, 2002 and September 28, 2002.

Commissioner Giordano made the following correction to Page 3 of the September 25, 2002 Planning Commission minutes which read the following:

Commissioner Giordano noted that she received a written

determination from the FPPC and that she does not have a conflict of interest on this item and will be voting on this item.

Motion to approve the minutes of September 25, 2002 and September 28, 2002 as submitted.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

ABSTENTIONS: 1 (Giordano-abstained on the September 28, 2002 meeting minutes only since she was absent)

V. ANNOUNCEMENTS

Tambri Heyden, Planning Manager, announced that the Planning Commission meetings will be continuing at the School District Boardroom throughout the month of October. The November 13, 2002 Planning Commission meeting will be held in the new Council Chambers. The Planning Commissioners are to pick up their packets through the end of October at the old City Hall at the Great Mall location. Ms. Heyden also mentioned that card keys and lockers are on order for the Commissioners.

Ms. Heyden also responded to Commissioner Giordano's question from the September 11, 2002 meeting about having staff look into temporary construction fences that are still in existence. Commissioner Giordano had pointed out three locations. Staff investigated and made site visits to these locations with Engineering and determined that two of the fences are Cal Trans with the exception of the one on Jacklin Road, which staff is working with the HOA to replace.

Commissioner Nitafan reported that he attended the California League of Cities annual conference last week and that it was an exciting conference. The format had changed from previous years and encourages the Commissioners to attend next year. He felt the Milpitas Youth Commission would benefit from attending as well.

Commissioner Sandhu complimented the City Manager's office and Blair King, Assistant City Manager for the Ed Levin Dog Park presentation at the Parks and Recreation Commission meeting.

Commissioner Giordano mentioned that next week, she will attend the first Los Esteros architectural review beautification enhancement Committee meeting.

Commissioner Giordano also wanted to personally thank Council member Trish Dixon and Mayor Manayan for their work on the new City Hall Subcommittee and leaving a legacy for the citizens with the new building.

Vice Chair Lalwani echoed Commissioner Giordano's words.

VI. APPROVAL OF AGENDA

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Lalwani/Sandhu

AYES: 7
NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 1, 2, 3, 4, 5
and 6.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

There were no changes from staff.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 3, 4, 5 and 6.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 2 and 4
only**

Motion to close the public hearing on Consent Item Nos. 2 and 4 only. Consent Item Nos. 1 and 3 were continued to the November 13, 2002 Planning Commission meeting and Consent Item Nos. 5 and 6 were continued to the October 23, 2002 Planning Commission meeting.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 3, 4, 5 and 6 with staff recommendation and special conditions noted in the staff report.

***1 USE PERMIT AMENDMENT NO. P-UA2002-8:** A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating at 231 West Calaveras Boulevard (APN: 022-25-041). Applicant: Sung Ho Yoon (PJ # 2245). Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Continue to November 13, 2002)*

***2 USE PERMIT NO. P-UP2002-23:** Request to operate a cafe and snack bar, including beer and wine sales, at 538 Barber Lane (APN 086-01-043). Applicant: Lei Bin-Ling for Bubble Act Cafe. Project Planner: Staci Pereira, 586-3278. *(Recommendation: Approval with Conditions)*

***3 USE PERMIT AMENDMENT NO. P-UA2002-20 and "S" ZONE AMENDMENT NO. P-SA2002-69:** Request to add 12 outdoor seats to the Burrito Express Restaurant at 275 Jacklin Road in Foothill Shopping Center (APN 026-28-029). Applicant: Shapell Industries (PJ # 2299). Project Planner: Staci Pereira, 586-3278. *(Recommendation: Continue to November 13, 2002)*

***4 USE PERMIT NO. UP2002-37:** A request to allow a temporary vendor to sell and make custom wood signs from a trailer at 301 Ranch Drive (APN 22-29-016). Applicant: Mike Stephany. Project Planner: Staci Pereira, 586-3278. *(Recommendation: Approval with Conditions)*

***5 PLANNED UNIT DEVELOPMENT NO. P-PD2002-2 & EIA No. P-EA2002-10:** Request to replace an existing residence, that is legally nonconforming due to its location within the Crestline Zone of Protection and a southern setback less than 40 feet, on 4.6 acres at 1000 Country Club Drive (APN 29-03-014) with a new 11,200+/- sq ft.

house also located partially within the Crestline Zone of Protection and a reduced southern setback. Applicant: Christina Martinez. Project Planner: Steve Burkey, 586-3275. *(Recommendation: Continue to October 23, 2002)*

***6 USE PERMIT NO. P-UP2002-13, S-ZONE**

APPROVAL P-SZ2002-5 & EIA NO. P-EA2002-9: A request to construct a 11,400 square foot church building and 5,081 square foot community building with a residence and to adopt a draft mitigated negative declaration at 1600 South Main Street. (APN: 086-22-036, 037, 038) Applicant: Saint Gabriel Ethiopian Orthodox. Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Continue to October 23, 2002)*

Before approving the consent calendar, Commissioner Giordano referenced Consent Item No. 4-Use Permit No. UP2002-37 and asked how the cleaning deposit is handled.

Ms. Heyden responded that Special Condition No. 5 references the cleaning deposit and noted that the vendor pays the deposit when he applies for a business license. The cleaning deposit is refunded after the end of the event.

M/S: Giordano/Lalwani
AYES: 7
NOES: 0

**VIII.
NEW BUSINESS**

Troy Fujimoto, Assistant Planner, requested that the New Business Item be heard before the public hearing item since the applicant had not arrived. Chair Hay agreed.

**1. PLANNING
COMMISSION'S ROLE
IN REDEVELOPMENT
ACTIVITIES:**

Blair King, Assistant City Manager, wanted to thank Chair Hay and Tambri Heyden, Planning Manager for being able to discuss the Redevelopment activities in the City, which is a powerful economic tool used in California, and that no action is necessary by the Commission. Mr. King then introduced **Don Fraser, with Fraser and Associates,** who is an expert in redevelopment to give a PowerPoint presentation.

Mr. Fraser gave a presentation of California Redevelopment Law and the Planning Commission's role in redevelopment activities.

Vice Chair Lalwani asked if there will be an increase in monies resulting from the project.

Mr. Fraser replied that there is currently a \$502 million dollar limit, but that they plan on incorporating a financial analysis for City Council since they do not know what the new area limit will be.

Commissioner Nitafan asked if affordable housing is mandated by the state and if the City is in line with the requirements.

Mr. Fraser replied that there is certain criteria that the affordable housing will have to meet.
Mr. King noted that the current area complies with the

20% obligations.

Mr. Fraser pointed out that 20% of the tax increment financing (TIF) must be put in a pot and all agencies receive a portion of the money.

Mr. King noted that the percentage of pass through increases over time. Towards the end of the project life, a greater percentage goes to the other taxing entities.

After a question from Chair Hay about when the pass through provision went into effect, Mr. King replied that state law changed when AB 1290 was adopted in 1994 which was after the inception of the existing redevelopment area.

Commissioner Nitafan asked if the housing on Calaveras could be added to the redevelopment area.

Mr. King replied that the survey area was adopted in 1998. To add area now, the City would have to go back and readopt a new survey area.

Chair Hay mentioned that Midtown is the area that generates the tax increment and it is not necessary that the tax increment be spent on that area, depending on the needs.

Mr. King pointed out that the project area is a defined geographical area, which means that funds can be spent outside the area, but the expenditure has to benefit the area.

Commissioner Williams commented on the PowerPoint presentation and mentioned how it alluded to Project Area 1 and recommended and indicated that the project is terminating, and the new Midtown area would be extended on. He questioned whether over the course of time, as the original project is terminating, the funding from the Midtown will be used to clean up and finalize the proposed Midtown proposal, which would help another redevelopment.

Mr. Fraser replied that the logic was the opposite, that the current project area money could be used as seed money to get redevelopment started in Midtown, based on property tax value. It is better to add to an existing area and gain revenue and it won't stop the new area from continuing on. Even if you couldn't raise any money from the project area, you could squeeze money out of the \$500 million.

In response to Commissioner Sandhu's question regarding the redevelopment agency hotel, Mr. King responded that the agency owns the Renaissance Hotel property and there is a specific agreement.

Chair Hay thanked staff and the consultant for the presentation and proposal and looked forward to the draft at the October 23, 2002 meeting.

Mr. King replied that they will bring forward preliminary

plans of the area staff is recommending and that the City Attorney will prepare a conflict of interests presentation regarding the redevelopment agency.

IX. PUBLIC HEARINGS

Chair Hay opened the public hearing on Agenda Item No. 7.

1. SIGN VARIANCE NO. P-VA2002-3: (Applicant: Swerdlow Real Estate Group)

Troy Fujimoto, Assistant Planner, presented a request for a variance to exceed the maximum, 60-foot freestanding sign height limit and 450 square foot sign area for regional shopping centers for an existing, 73-foot tall, 648 square foot pylon sign at the Great Mall of the Bay Area, otherwise requiring removal under the City's sign code amortization provisions and recommended denial based on staff findings that the required variance criteria cannot be met.

Mr. Fujimoto mentioned that the sign is nonconforming at 73 feet, and that the applicant would like to keep the sign at its current height.

Commissioner Galang asked how many signs exist at the Great Mall.

Mr. Fujimoto responded that there is one on site, one approved and unbuilt, one freestanding sign off I-680 and one off I-880, and there is signage on the building. Mr. Fujimoto also pointed out the sign program that was approved for the elevator tower.

Commissioner Giordano asked if this ten-year amortization program is similar to the Denny's Restaurant sign that was systematically lowered.

Mr. Fujimoto recalled that the Denny's sign was nonconforming and did go through the amortization process.

Commissioner Giordano asked if there is any other amortization program signs that are currently going on.

Mr. Fujimoto responded that he is not aware of any signs going through the amortization process.

Commissioner Giordano questioned whether approving the variance would set a precedent for the Town Center and McCarthy Ranch.

Mr. Fujimoto replied that each variance is evaluated on a case by case basis, which means staff makes findings for each one.

Ms. Heyden also pointed out that each property would have to demonstrate uniqueness for their own piece of property, such as size and location.

Chair Hay asked if that criteria is in state code.

Ms. Heyden replied that it is in state law and is mirrored in our own local zoning ordinance.

Commissioner Nitafan asked if the sign was recently refaced and Mr. Fujimoto responded "Yes".

Vice Chair Lalwani asked why the Mall didn't get approval before they fixed the sign if it was nonconforming to height and size.

Mr. Fujimoto responded that the sign has been there since the Ford factory was constructed in the late 1950's. It was legal conforming as per the ordinance at that time, but was later rezoned making it legal nonconforming.

Chair Hay mentioned that the reason for the ten years amortization period is so that the property owner can have time to make it conforming to ease any financial burden.

Commissioner Sandhu asked where the sign is located at the Mall.

Mr. Fujimoto responded that the sign is the tall freestanding sign near the oak trees in front of the old City Hall at the Mall.

In response to Commissioner Galang, Mr. Fujimoto responded that freeway frontage means that the shopping center property abuts the freeway.

Ms. Heyden elaborated on the definition and mentioned that the parcel has a common property line with the freeway, and that the freestanding signs can be seen from the freeway. The Mall doesn't have property boundaries abutting the freeway and has been granted off-premise signs through other approvals on I-680 and I-880.

Commissioner Galang asked for the location of the Town Center and Mr. Fujimoto responded that it is near City Hall.

Dan Cetina, applicant, pointed out that in his view, the Town Center and McCarthy Ranch are not really regional shopping centers since they are not over 1 million square feet. The sign is needed for cars accessing from Capitol and that the sign has been there for 50 years.

Commissioner Sandhu asked why this variance has been brought up now.

Mr. Fujimoto responded that it was due to the amortization period that will be ending in May 2003.

Mr. Heyden replied that this condition for removal of sign has been brought up many times before over the past ten years as part of conditions of various Mall approvals.

Vice Chair Lalwani clarified that the sign is 648 square feet and the variance is requiring the sign to be lowered and reduced to 450 square feet.

Vice Chair Lalwani asked how much it would cost to remove the sign and Mr. Cetina responded \$50,000 dollars.

Chair Hay asked Planning Manager Heyden to repeat the limitations that the Planning Commissioners must evaluate to conform to state law requirements and City code.

Ms. Heyden restated the variance criteria of size, topography, surroundings and location. She also noted that the Mall's lease arrangements cannot conflict or override the code. She summarized staff's position that the variance criteria have not been met, that the burden of proof is on the applicant, noting that though the Mall is unique in size, relying on regional draw that off premise signs on the freeway have been approved for this purpose which exist. She also restated that the sign's height does not provide the visibility it is intending since it is only visible from one direction.

Commissioner Galang suggested that a spotlight be used to draw attention to the sign.

Mr. Cetina responded that the lights are very important to the sign and that lowering the sign seven feet will not give them visibility they feel they need even though they have off-premise signs. Mr. Cetina referenced Steven's Creek shopping center at Santana Row and that their sign does not meet any criteria, but the sign is still there because it is unique. The Great Mall is unique, which should enable the Planning Commission to grant a variance to the sign, which is unlike any other property in Santa Clara County.

Commissioner Williams asked what physical changes were made to the sign in 1993 when the Great Mall opened.

Mr. Cetina replied that the structure remains the same, except for the Great Mall lettering.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing
on Agenda Item No. 7**

Motion to close the public hearing on Agenda Item No. 7.

M/S: Sandhu/Giordano
AYES: 7
NOES: 0

Commissioner Nitafan felt that we must comply with the ordinance so that it is not weakened. The Mall attracts customers from all over and is a vacation spot, but to better meet community needs, a lowered sign would serve the community better.

Commissioner Giordano sees the Mall as unique mentioning that the light rail wasn't in place 10 years ago.

Commissioner Williams mentioned that the sign is nostalgic and would be in disagreement with the recommendation of staff because whether the current sign is lowered, it is still part of the old Motor Plant, taking away the history of Milpitas.

Commissioner Sandhu considers the sign as unique and believes the Great Mall sign would lose the uniqueness of

the sign.

Commissioner Galang agreed with fellow Commissioners that the sign is historical and lowering it will not make a difference at all so stated support of the variance. Chair Hay mentioned that if the Commission was going to grant a variance based on the sign being unique, the Commission needed to review every property on its own merits. It is a regional mall. He expressed his concern with the lack of night photos and noticed in the daytime photo that Light Rail blocks visibility. Therefore, he concurred with fellow Commissioners.

Ms. Heyden distributed revised findings to support the Commission's intended approval of the variance.

Commissioner Williams added the following finding:

The sign is unique because it is representative of the historical beginnings (dating back to the Ford Motor Co. Plant) and heritage of the City of Milpitas.

Commissioner Giordano amended the following finding for No. 3:

Given the location of the mall relative to the light rail superstructure, the larger and taller sign is warranted since it exceeds the height of the superstructure and will provide increased visibility for the mall from the two major regional transportation corridors (Interstates 680 and 880).

Chair Hay and Commissioner Nitaflan amended the following finding for No. 2.

Given the unique size and location of the mall and due to no freeway frontage and because it is landlocked, the larger sign that exists is warranted for visibility to draw and provide direction to regional customers.

Motion to approve Sign Variance No. P-VA2002-3 with amended findings and recommended approval with no conditions.

M/S: Giordano/Sandhu
AYES: 6
NOES: 0
ABSTENTIONS: 1 (Lalwani)

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:00 p.m. to the next regular meeting of October 23, 2002.

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 23, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu, Williams

Absent: None

Staff: Burkey, Faubion, Fujimoto, Heyden, Judd, King, Lindsay and Pereira

**III.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF
MINUTES**

September 25, 2002
and September 28,
2002

Chair Hay called for approval of the minutes of the Planning Commission meeting of October 9, 2002.

Commissioner Giordano made the following correction to Page 1 of the October 9, 2002 Planning Commission minutes which reads as follows::

Under Public Forum, reference to the street name for Larry Voellger should be corrected to read "*Cardiff Place*". She corrected the next paragraph to read: *Commissioner Giordano made comment to Robin Hayes with the Milpitas Alliance of the Arts and Ms. Cherie responded that she works for the Milpitas Arts Commission. The remaining portion of that paragraph should be deleted.* (As requested, staff checked on the spelling of Mr. Voellger's name; the files in Finance confirmed his name was not misspelled.)

Motion to approve the minutes of October 9, 2002 as corrected.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced that a key lock for Commissioners' new lockers and their key card for entry to the building were distributed. The lockers will be located in the Utility Room, next to the Committee Meeting Room on the first floor at City Hall. The Utility Room requires a hard key, which will be distributed at a later date before the next meeting. Commissioners will be notified where they can pick up their October 23rd meeting packet at City Hall.

Commissioner Nitafan requested that, if there is staff available, he would like to have the meeting packets delivered to Commissioners homes, as was done in the past. Per **Chairperson Hay's** request, **Ms. Heyden** will inquire with the City Manager as to whether or not this request can be met.

**VI.
APPROVAL OF
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 1, 2, 3, 4,
5, 6 and 7.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

There were no changes from the Commission or the audience. **Ms. Heyden** requested that Consent Item No. 3 be taken off the consent Calendar. A corrected handout was distributed for Consent Item No. 2 that shows the correct expiration date of the Use Permit. The date is "2003", rather than "3003". **Ms. Heyden** reported that Consent Item No. 5 refers to a property in the Midtown area. However, the application was incomplete prior to the adoption of the Midtown Plan and therefore does not comply with the Midtown zoning and design guidelines. The Church would become a new legal, non-conforming use if this is approved tonight. Commissioner Giordano pulled Consent Item No. 5 stating that she has issues with the parking and the use of the Community facility.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 4, 6 and 7.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 1, 2, 4, 6
and 7.**

Motion to close the public hearing on Consent Item Nos. 2, 4, 6 and 7. Consent Item No. 1 was continued from the last meeting to the November 13, 2002 Planning Commission meeting and therefore remains open.

M/S: Nitafan/Williams

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 4, 6 and 7 with staff recommendation and special conditions noted in the staff report.

***1 USE PERMIT NO. P-UA2002-21:** Request to add beer and wine sales to an existing restaurant at 89 S. Park Victoria Drive (APN 88-04-048). Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278.
(Recommendation: Continue to November 13, 2002)

***2 USE PERMIT NO. P-UA2002-22:** Request to add a total of 28 indoor and outdoor seats to an existing take-out restaurant at 279 Jacklin Road (APN 29-28-029). Applicant: Mercedes Albana. Project Planner: Staci Pereira, 586-3278.
(Recommendation: Approval with conditions)

***4 USE PERMIT NO. P-UP2002-38:** Request to locate a 20,000 square foot community center in an existing office building to include a senior center, fitness facilities, library and lounge at 555 Los Coches Street (APN: 086-28-051). Applicant: India Community Center. Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: Approval with Conditions*)

***6 USE PERMIT NO P-UP2002-23:** A three-month review of a religious assembly in the Industrial Park District at 473-479 Los Coches (APN 086-28-033). Applicant: Syed M. Shah. Project Planner: Staci Pereira, 586-3278. (*Recommendation: Note receipt and file*)

***7 S-ZONE AMENDMENT P-SA2002-65 & USE PERMIT NO. P-UP2002-32:** Continued from September 25, 2002) A request to construct a 12,000 square foot nightclub within the Great Mall of the bay Area, with food service and full service bars serving all types of alcohol with hours of 4:00 PM to 3:00 AM at 1100 Great Mall Drive (APN: 086-24-055). Applicant: Big Sky Entertainment II. Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: The applicant has withdrawn this request. Note, receipt and file.*)

Before continuing the meeting, **Chair Hay** moved Agenda Item No. 11 after Item No. 7. However, after the Public Hearing of Item No. 3, Chair informed everyone that the applicant for Item No. 7 has withdrawn the request.

M/S: Giordano/Williams
AYES: 7
NOES: 0

VIII. PUBLIC HEARINGS

3. VARIANCE P- VA002-4 AND "S" ZONE APPROVAL – AMENDMENT PSA2002-79 (Greater Love Church)

Chair Hay opened the public hearing on Agenda Item No. 3.

Staci Pereira, Assistant Planner, presented a request for variance regarding fence height in the required front yard, plus request to approve perimeter fencing for the site, chain link fencing around the A/C units, a revised landscape plan, and deletion of the automatic irrigation requirement at 159 Dixon Road (APN 26 5-18) on behalf of Greater Love Church.

Ms. Pereira stated the applicant has installed a 6-ft. tall wrought-iron fence with gate within the required 20-ft. front yard, along the parking lot that connects to the building, and wishes to retain this fence without reducing it to 42". Staff supports this request for variance and recommends "S" Zone approval subject to the special conditions contained in the staff report.

In response to Chair Hay's request for a specific tie of each hardship to the conditions that have to be legally met, in order to justify a variance, Ms. Pereira reviewed each of the required findings for variance approval items a) through e) on page 4 of the staff Report included in Commissioners' meeting packets.

Jim Rasp, the engineer and the applicant on behalf of the Greater Love Church accepted all recommendations and

conditions in the staff report and appreciated staff's assistance in resolving the issues. He stated that there is a fence shown on the original site plan that was approved. The gate that crosses over the driveway was not shown. The height of the fence wasn't stated and they were in error in constructing the fence with the gate by not checking with regulations regarding this.

**Close Public Hearing
on Agenda Item No.
3**

Motion to close the public hearing on Agenda Item No. 3.

M/S: Giordano/Lalwani

Commissioner Nitafan asked about the Front Yard Paving ordinance to which **Ms. Heyden** indicated it does not apply to the Church which is zoned C2, it applies to private residences.

AYES: 7

NOES: 0

Motion to approve Variance No. P-VA2002-4 and "S" Zone Approval Amendment P-SA2002-79 with conditions.

M/S: Williams/Sandhu

Chairperson Hay commented that variances are fairly difficult to get passed because they are the exception to the rule, rather than the rule and the Commission needs to be careful not to set precedence. However, when the variance is justified and can be legitimized with the findings, there is a valid reason to move forward with approval. In cases such as this one, Chair Hay said he asks himself if he would have approved this before the fact. In this case he said he believed he would have so he is in support of the motion.

AYES: 6

NOES: 1 (Nitafan)

**5. USE PERMIT NO.
P-UP2002-13, "S"
ZONE APPROVAL P-
SZ2002-5& EIA NO.
P-EA2002-9**

*(Applicant: Saint
Gabriel Ethiopian
Orthodox)*

Troy Fujimoto, Assistant Planner, presented a request to construct an 11,400 square foot church building and 5,081 square foot community building with a residence and to adopt a draft mitigated negative declaration at 1600 South Main Street. (APN: 086-22-036,037,038). Staff recommends that the Commission adopt the Mitigated Negative Declaration, approve the S-Zone Approval and Use Permit, based on the findings and special conditions of approval as noted on Page 9 of the staff report. He gave a powerpoint presentation of the project.

Commissioner Nitafan requested clarification of the parking location.

In response to a question from **Commissioner Giordano**, Mr. Fujimoto reported that the number of 65 required parking spaces be taken from the Zoning Ordinance. The Ordinance states that for religious buildings, 1-parking space per 5 seats shall be provided. A lower number of 60 was given for the parking study done by a private consultant.

Commissioner Giordano asked, "what guarantees do we have that both facilities will not be utilized at the same time?" Mr. Fujimoto explained that the zoning ordinance also allows for a mixture of uses for a religious facility and it allows whichever use derives the highest parking

generation; in this case it is the Sanctuary. We do not have any assurances but their operational plan indicates that the buildings will operate independently. Mr. Fujimoto stated that to address Commissioner Giordano's concern regarding the real possibility of future parking issues, staff could implement a 6-month or 12-month review of parking. The surrounding businesses would be notified when the 6-month review would take place.

Staff explained to Commissioner Williams that the zoning text amendments clarify that if there are no dedicated seats, then for general purposes, the equation of 1-seat equals 7-sq. ft. would be used. In this case, there are actual seats.

Additionally, Commissioner Williams requested a colored rendition of the architecture for the Commissioners and the files which staff will provide.

Commissioner Lalwani reported that a business friend of hers located across the street from Jain Center informed her that there are 30 parking stalls which he will make available for use by the Church on the weekends when they are not there and that this kind of solution could be used here, too.

In response to Commissioner Nitafan, Mr. Fujimoto stated that the landscaping plan would return to the Subcommittee for approval.

Mr. Fujimoto reported to Commissioner Nitafan that off-site parking is not the only option, TDM measures have been implemented with other religious facilities such as shuttles, car-pooling, which all help reduce parking demands. Additionally, Mr. Fujimoto reported that the City allows over-flow parking for special events wherein they can have more persons than the parking can accommodate. There is an additional review when a special event is requested.

Commissioner Giordano stated that although the project is a beautiful building, she would not support the way it is written and delivered to the Commission. She believes the parking solution needs to be addressed, for both facilities being in use at once, before the buildings are constructed. A solution can be presented as an option to how that would be addressed, prior to approving the project. Saying that one facility will not be in use at the same time as the other is not a solution to the parking and therefore, she cannot support it tonight but would be in support of reviewing it later with an option or options laid out.

Responding to concerns with traffic circulation at peak hours, Mr. Fujimoto referred to the site plan, and indicated the Church incorporated a turn-around area in the south parking which should help the traffic movements.

The **Applicant, Mulugeta Wudu**, representing the Church gave some background information on the Church as regards to parking at its previous site in Cupertino that this project will replace. Regarding this project, he stated the Community Center is an extension of the Church where the

congregation will go after the services. This is a continuation of the prayer services. Both facilities will not be occupied at the same time because the Community Center is used for continuation of the prayer services.

In response to **Commissioner Lalwani** when the Church is not using it, they will have studies, education, the Choir and other meetings in the Community Center. The peak hour is on Sunday from Midday to about 7:00 PM.

Michael Achkar, designer of the project, thanked the Planning staff for all their assistance. Mr. Achkar suggested, because of Commissioners' concerns, that there be a requirement that the Sanctuary not be in use at the same time as the Community Center.

Domse Oluma gave some Ethiopian Orthodox Church background. He then reported that there was never a parking problem at the former Cupertino Church site, which had only 49 parking spaces and attributed it to carpooling. There would be 65 spaces at the project site and he believes there will definitely be no parking problems with the additional 17 spaces.

**Close Public Hearing
on Agenda Item No.
5**

Motion to close the public hearing on Agenda Item No. 5.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Chair Hay stated that he felt it important that the public understand the Midtown Area restriction on churches and he asked staff to review the sequence of events regarding the Church project so it is clear and in the record.

Mr. Fujimoto reported that currently, in the approved Midtown Plan, there is a restriction of having quasi-public uses within 1,000 feet of another use. Prior to that date, there was no restriction as just mentioned. This application was submitted prior to the Midtown Plan approval so this project is subject to the old zoning ordinance that was M-1 light industrial. They did not have to comply with the 1,000-foot separation. Chair Hay said that was determined to be the case by City Council on March 19, 2002. Council set May 2, 2002 as the effective date of the new Midtown regulations. They grandfathered in all Planning Commission applications that had been in the pipeline that had been deemed complete, all projects with approved planning permits that had not expired, all vesting tentative maps and all building permits, plan checks exempt from Planning Commission review. Mr. Fujimoto confirmed that this application meets those requirements.

Commissioner Giordano commented that after hearing the applicant speak about the use of both facilities, she feels very comfortable that they will not be used at the same time. What she still finds unsatisfactory is the reduction of parking spaces based on the parking survey as opposed to city standard of 65 required spots. She said she would support the motion if two things were added: 1) That the

Sanctuary would not be used at the same time the Community Center is in use. 2) That there would be a 6-month review of the parking survey as opposed to the parking requirements to see if other options need to be looked at.

Mr. Fujimoto clarified that the 60 parking spaces noted in the staff report are for comparison/informational purposes and it is to reinforce staff's assessment that there is adequate parking. The applicant did not request a reduction in parking. Per the Zoning Ordinance, this facility does require 65 parking spaces without a parking reduction.

There was no consensus to add a condition to reflect Commissioner Giordano's Item No. 1 above.

There was consensus to add a condition to reflect Commissioner Giordano's Item No. 2 above. Mr. Fujimoto stated that the 6-month review should be contingent upon the occupancy of the Community Center building.

Motion to approve Use Permit No. P-UP2002-13, S-Zone Approval P-SZ2002-5 & EIA No. P-EA2002-9 with conditions and added special condition for a 6-month review of parking.

Chair Hay confirmed to Ms. Heyden that the approval is inclusive of the Findings handout regarding the building height distributed by Mr. Fujimoto.

M/S: Nita fan /Sandhu
AYES: 6
NOES: 1 (Giordano)

**7. S-ZONE AMEND-
MENT P-SA2002-65
& USE PERMIT NO.
P-UP2002-32:**

*(Continued from
September 25, 2002)*

Request to construct a 12,000 square foot nightclub within the Great Mall of the bay Area, with food service and full service bars serving all types of alcohol with hours of 4:00 PM to 3:00 AM at 1100 Great Mall Drive (APN: 086-24-055). Applicant: Big Sky Entertainment II. Project Planner: Troy Fujimoto, 586-3287.
The applicant for Item No. 7 has withdrawn this request. Staff will note, receipt and file.

Earlier in the meeting, Chair Hay moved Item No. 11 to be heard after Item No. 7.

**IX. NEW BUSINESS
11.
ADMINISTRATIVE
PERMIT NO. P-
AD2002-16**

*(Applicant: Barbara
Rigdon)*

Tambri Heyden presented a request to re-roof the wood shake home at 670 Perth Court (APN 28-14-021) using a lifetime, asphalt composition shingle (not among the PUD-listed development standard materials) requiring a determination that the proposed material mimics the profile of the listed PUD roofing materials.

Staci Pereira displayed roof samples and Ms. Heyden commented on the difference in the thickness of the traditional asphalt composition and the one to be used for the re-roofing. This is the first applicant who has benefited from the zoning code amendment that came before the Commission in August, approved by the City Council in September. In this PUD, wood shake and tile are the only materials allowed. The zoning ordinance amendment allows

for staff approval of alternate materials if the alternate material provides the same desired qualities, as the material required in the PUD. This product is brand new, has a lifetime warranty because of the 3-layer thickness of tile to give the same texture, appearance and volume of wood shake. Ms. Heyden stated that staff is recommending approval of this type of asphalt composition and if the Commission concurs, staff will be using this product as the standard for asphalt composition roofs of existing wood shake or tile.

In response to a question regarding which prevails, the Zoning Ordinance or the PUD, Ms. Heyden reported that the PUD specifies certain standards, but the Zoning Ordinance allows for alternate materials if it meets the PUD standards.

Ms. Heyden explained that if an applicant comes to the City requesting re-roofing and they are in a PUD that has the requirements for wood shake or tile, staff would go to the streamlining provisions that allow the alternative material if the findings can be made. This would allow the request to be approved administratively as part of a plan check and would not have to go to the subcommittee for approval.

Ms. Pereira clarified that lifetime just indicates the warranty. This type of material is labeled "T-L" which is tri-laminate, which gives it three layers. Staff would require all future applications for a re-roof in PUDs requesting asphalt composition to be of this type and nothing less.

Mr. Rigdon clarified that the picture of the 25-year composition roof in the Commissioners' packets is not what he would like to see in his neighborhood. He also noted that his type has no potential for maintenance problems.

Dave Richerson, 1920 Yosemite Drive, spoke in favor of approval of the project stating he believes that the product to be used is superior and outperforms current approved product.

Motion to close public comment.

M/S: Giordano/Galang

AYES: 7

NOES: 0

Chair Hay commented that tonight's action, using this new zoning ordinance, brings a new way of how this Commission operates, specifically, the subcommittee. Tonight's action sets a higher standard and one which can be handled administratively at the staff level rather than the applicant going to the Commission or subcommittee. He stated he is pleased with the action taken, as this is a huge improvement for the City process.

Commissioner Giordano requested clarification that the warranty issue is not what the City is determining as a superior product, but rather the composition of the 3 layer thickness of tile to give the same texture, appearance and

volume of wood shake. Ms. Pereira confirmed this.

Motion to approve Administrative Permit No. P-AD2002-16

M/S: Giordano/Galang

AYES: 7

NOES: 0

RECESS

Chair Hay called for a recess at 8:45 p.m.

RECONVENE

Chair Hay reconvened the meeting at 9:00 p.m.

**8. SIX-MONTH
REVIEW OF USE
PERMIT NO. 1555**

*(Continued from April
10, 2002)*

Mr. Fujimoto presented a 6-month review to identify land use compatibility and operational issues at the Home Depot located at 1177 Great Mall Drive (APN: 086-24-053). Staff is recommending approval with conditions. Mr. Fujimoto recapped the compatibility issues raised since Home Depot opened which are included in the staff report. He stated that in November 2001, Home Depot submitted a proposal to construct enclosures as indicated in the staff report, but chose not to complete any of the construction until after the 6-month review. Since November 2001, there has been no construction of the proposed and approved enclosures. Although general housekeeping has improved the issue of outdoor storage as well as the accumulation of pallets continue. The photos in the Commissioner's packets show the Home Depot area at various times during the day. The new, staff-recommended, condition of approval requires Home Depot to complete construction of the enclosures and other minor improvements by November 2002.

Ms. Heyden commented that currently there is a difference in opinion between the City and Home Depot as to whether or not Home Depot has a compatibility issue. The City believes compatibility issues exist, while the applicant does not. Home Depot believes they have complied with their Use Permit requirements, the zoning ordinance and their 6-month review and feel there is no action needed on their part.

In response to **Commissioner Nitafan, Ms. Heyden** reported that task force met twice, since April 2002, with the applicant to try to resolve this, however, Home Depot representative has chosen to take no action until the six-month review is heard.

Chair Hay reviewed the time frame for conditions to be met and also reviewed the history of the Home Depot building approval, and what was agreed to by both parties. He recalled that the Commission was told there would not be any problems and the new store would take care of all the issues, so the project went forward. And now, things are back to where they were with the problems with the first store. Chair Hay stated that at this point Home Depot needs to address the compatibility issues or the City needs to start the process of Use Permit revocation. He stated that staff has made good efforts to work with the applicant. Although the applicant's management has stated that they wanted to work with the City, now, the applicant is basically saying they don't want to do what is necessary.

Chair Hay suggested there be a condition for the screening wall, that this Commission retain its authority for another 6-month review, and if that wall is not up, then staff must start the Use Permit revocation process. He added that it is important that the people who do business here are good neighbors with the citizens who live here.

In response to **Commissioner Williams**, who indicated his support of the Chair's suggestion, **Ms. Heyden** indicated that the applicant could appeal the Commission decision to the City Council.

Dave Jaber, Store Manager of Home Depot, expressed that the old store issues and new store issues can't be compared. He feels that Home Depot is not storing materials and that the screen wall would pose a hardship for the store to receive truck deliveries. He stated he understands what his restrictions are and he believes 100% that Home Depot has complied with everything they came to this Planning Commission with and has complied with both his guidelines set forth by his company and by the City of Milpitas. He stated he is tired of coming before the Commission and being called a bad neighbor and said he hasn't received one complaint since December 3, 2001, the day he assumed responsibility of the store. He said he had never received documentation from the City of complaints from neighbors. He reported that his store is used as an example for all the Home Depot stores on the west coast regarding perimeter security of the building. He stated he follows the District Manager's rule and does not keep any materials outside the building after 7 p.m.

Mr. Jaber stated that building the screen wall that the City feels is necessary is going to create problems for a situation that has none at this time. It will create extreme hardship on loading and unloading of trucks and he doesn't feel it is necessary. He has changed some of the receiving restrictions in place at the opening of the store; and now receiving is done during the hours of 7:00 AM and 7:00 PM on the south side of the building. He felt that would be better for the Parc Metro neighbors. He stated he has complied with 7 a.m. to 7 p.m. delivery restrictions on the north end of the building. He explained that with the exception of a few of the pictures in the Commissioners' packets, there was a 3-week period of time, back in late June, when all Home Depot stores were required to lower racking from a 16 ft. level to 12 ft. in every store. He said at that time steel racking overflowed into the north end parking lot and was outside overnight for about 5 days. Mr. Bill Weisberger notified him of the violation and he apologized. The other pictures are of product that is unloaded and staged.

Mr. Jaber said there is a difference between staging and storing and explained the staging of awkward product. He assured the Commissioners that product is all inside the store by 7:00 PM. Therefore he does not see compatibility issues. He explained that the wall would not allow for trucks to unload some of the longer loads of lumber, i.e., 16 ft. lumber, because of the area needed on both sides of the truck to lift and drop it in the staging area safely. He feels the current operation is the most safe and efficient and does

not see any benefit from building a screen wall.

Matt Francois, Home Depot attorney, of Cassidy, Shimko & Dawson, stated it is important to remember that the screen wall was not a condition of approval that was imposed by the City Council on this Use Permit. The condition required one, 6-month compatibility review hearing before the Commission to determine if there was a compatibility issue. In the record, the Council had in mind the noise complaints as did the staff report. He stated that given there are no compatibility complaints from residents, Home Depot is left wondering why staff is recommending construction of the screen wall. Since the zoning ordinance does not define storage, he stated the definition in the dictionary defines storage as safekeeping of goods in a depository or warehouse. Based on that definition of the term storage, no one could claim that materials delivered, offloaded and brought into the store the same day, and usually by 5:00 p.m., constitutes storage. He referred to Milpitas Zoning Ordinance, Section 11-10-19.07-1 and Section 11-10-19.07-2 which he states clearly distinguishes between loading activities which can occur outside, unscreened, and outside storage activities which can only occur if screened.

Mr. Francois stated that since outside storage is not occurring, the City of Milpitas is not authorized to impose a screen wall pursuant to its own Zoning Ordinance. He believes a nine-foot screen wall will have a negative effect on aesthetics and will benefit only 3 residents out of a 350-unit complex. Those residences are 150 yards away from Home Depot and are not adjacent to Home Depot as represented by staff. He stated Home Depot provides significant benefit to the City, wants to be a good neighbor, is mindful of the need to comply with conditions imposed on the Use Permit, and all other relevant City ordinances. Home Depot believes the new store should not be punished for the old store's problems.

Mr. Francois stated that since the store operations are entirely compatible with the neighboring residential uses, Home Depot urges the Commission to impose no additional conditions of approval on the Use Permit and to deem Condition No. 21 on the Use Permit satisfied. With respect to a continuing 6-month review, the Use Permit itself expressly states for 1, 6-month review before this body. Home Depot has been here twice now and has been open for 16 months. He stated no further continuances or compatibility hearings could be required consistent with the express terms of that Condition. Additionally, he stated that the current cost to construct the wall would be \$200,000.

Commissioner Williams recalled the history of events regarding the Use Permit. He said he felt the reason the project was approved because there was agreement for barriers or a screening to be put in place. It was assumed it would be done.

Chair Hay spoke about how the task force was formed to work with the applicant in an amicable way, compatible with Home Depot. Home Depot agreed to construct certain enclosures that the Commission approved. There has been

a drain on the task force and code enforcement resources and there seems to be a series of delays and unresponsiveness on the part of Home Depot to staff's efforts to get this resolved. Between July 2001 and today, something happened in terms of the issues we dealt with. Chair Hay said his expectation tonight was that this would have been a consent item and all those issues would have been worked out. He said it disturbs him that the issues were not resolved as had been proposed by Home Depot and recommended by staff and approved by the Planning Commission. Additionally, the relationship has deteriorated. He stated that the attorney for Home Depot makes a compelling point regarding the storage issue even though it does not address the noise issue and he believes there is a valid argument on that point.

Mr. Francois stated that the breakdown in the relationship was not intended. He explained how the outside storage problem was resolved in May of this year. Consequently, at this time, Home Depot does not believe they should be made to incur a significant expense for a problem that no longer exists. **Chair Hay** commented that the wall was not to screen or conceal outdoor storage because outdoor storage is prohibited; it was a question of the noise and the wall was to dampen the noise. Mr. Francois stated they have not received any noise complaints and the wall is not a noise wall. In the staff report, staff is recommending this wall to address outside storage based on City zoning provision. He again stated Home Depot is not storing product outside the store.

In response to **Commissioner Nitafan's** reference to a letter from the Parc Metropolitan Homeowner's Association regarding opposition to unscreened outside storage at the Home Depot, **Mr. Jaber** stated that he was never approached or requested to attend the homeowner association meetings and that he never saw their complaint letter until today. He reiterated that he has never received any noise complaints.

Additionally, **Mr. Jaber** commented that he believes the wall would be a hindrance and is not aesthetically pleasing to look at. He said that in April 2002, he promised the Commission changes that would free up congestion of store product and he said he has completed every one of those promises. He stated he has since discontinued several large, bulky categories of product and has freed up approximately 24 feet at a height of 12 feet, for product storage inside the store.

Ms. Heyden stated that part of the frustration has been that there is a significant management change at Home Depot and a significant reorganization. It was difficult to obtain the name of a contact and a telephone number for several months. The task force was a pilot program to alleviate City Code Enforcement resources and was successful in meeting with Home Depot to develop a site plan to address the issues. That site plan that came before the Commission last November was a product of the Home Depot architect, manager and staff. Both parties actually walked through the site to see where the wall would be located. It was determined to be a very workable site plan.

Maybe the wall plan needs to be redesigned. During the permit process, Home Depot revised the plans for a prefabricated wall to reduce cost to about \$40,000, which staff approved.

Ms. Heyden expressed concern with the impression or notion that residents have to be burdened with reporting violations. It is the job of City staff to find the violations without having the public come to us. The burden is not on the residents. The fact there hasn't been any complaints is because staff has been monitoring the situation and trying to take proactive measures in getting resolution. The task force was charged with funneling the comments and complaints from Parc Metro to staff who then resolved them as part of this pilot program. That explains why Home Depot was unaware of the number and frequency of the complaints staff was getting from Parc Metro. Many of those complaints were verbal. The letter from Parc Metro reflects a conversation staff had with Parc Metropolitan requesting they put their complaints in writing. Ms. Heyden apologized that the letter had not yet been unpacked from the move to the new City Hall when Home Depot's Attorney visited the Planning Office.

Ms. Heyden stated that staging vs. storage is a judgement that staff has made and which the Commission must make a determination on, based on the information from staff and based on representations made when the Use Permit first came to the Commission. In addition, Ms. Heyden pointed out that although this is a commercial use, it is not a permitted use in this zoning district, but rather it is a conditional use which requires certain findings such as compatibility.

Chair Hay requested advice from the City Attorney regarding what the Commission can and cannot do regarding the responsibility and authority of the Commission as pertains to the 6-month condition and use.

City Attorney Kit Faubion read into the record Condition #21 regarding the 6-month review: "Six (6) months after commencement of the Home Depot store opening for business this Use Permit (No. 1555) shall be reviewed by the Planning Commission in a fully noticed public hearing. The City expects that should a compatibility problem occur in the future between Home Depot and the surrounding residential community that Home Depot will take all commercially reasonable steps to resolve the compatibility problem."

Ms. Faubion stated that, with all due respect to Home Depot's Attorney, her opinion is that the condition does not implicitly or explicitly limit the Planning Commission to one hearing; it just states "shall be reviewed by the Planning Commission in a fully noticed public hearing". It is the Planning Commission's routine; the ability to conduct a public hearing includes the Commission's ability to continue that hearing if deemed appropriate to do that. Regarding the Conditional Use Permit, it is a discretionary permit. It is required where a use could be appropriate but is only appropriate if certain conditions are added to it to resolve issues that either have arisen or could arise or in order to

make it possible for the City to approve the project making all of the required findings. In this case, clearly outdoor storage is an issue. It's within the discretion of the City to determine at what point loading, unloading, and staging turns into storage. As part of the use permit determination, the required findings need to be made to support a use permit determination. It is also within the purview of the City to determine what elements constitute compatibility. Ms. Faubion pointed out that the Planning Manager has indicated that the requirement for screening outdoor storage is an ordinance requirement.

Responding to **Chair Hay**, **Ms. Heyden** confirmed that staff's determination is that it (the store product) has now become outdoor storage and is not just loading and unloading and that the existing enclosure is undersized for the number of pallets currently used at the store. An original enclosure was constructed as part of the opening of the store. The plans that came before the Commission in November 2001 showed the screen wall and the enlargement of the (current) enclosure.

Chair Hay stated that **Mr. Jaber's** concern is that if the wall were to go in where planned, that it would inhibit the ability to effectively unload deliveries of longer product.

Ms. Heyden indicated that as she understands it, the opening of the new Pro Store has relieved this store from having bulkier items delivered at this store. Staff was very careful about where the delivery trucks would be parked and how they would exit the property once they had finished their unloading activity. This required a change in the practice of the drivers. Staff worked very closely with store management at the time about how the wall would provide screening, security and be accessible to the trucks; it was never intended for the trucks to pass through the screen wall area.

Responding to **Commissioner Nitafan**, **Ms. Heyden** stated that staff is not recommending another 6-month review. The store has been open for over a year now, Parc Metro is fully occupied and staff cannot see any more new issues arising as long as this screen wall is constructed to screen the staging and storage activity. Chair Hay questioned if the Commission adopts the special condition and the 6-month review is waived, what assurance there will be for compliance. He also questioned what the next step is if compliance with the special condition #21 is not met. **Ms. Heyden** stated that if compliance with Condition #21 is not satisfied, staff, through the zoning ordinance, has the authority to bring back the Use Permit to the Commission for re-review, regardless of whether there are any additional reviews that have been set forth per the condition.

Dave Richarson, 1920 Yosemite Drive, stated yesterday he drove by the mall around 6:00-6:30 and saw merchandise outside the building on the north and south end, and at the Home Depot Pro store saw stacks of sheet rock in parking spaces on the west side, no trucks in site. To the left of the screened enclosure at the east side of the building were 5 parking spaces filled with racking materials;

this is a parking space violation. This morning at 7:00 AM, at the Great Mall Home Depot, on the south side of the building, he saw pallets full of topsoil, cinderblock, and stacks of loose pallets around the corner heading down the truck well to the loading dock. On the north side, there were stacks of various building materials, some very large number, and probably 8 x18 beams probably 14 ft. long. He wondered if it was delivered before 7 AM., or stored overnight

Mr. Richarson spoke of another business for which the Commission denied a use permit but which Council approved. He said there were problems. The business was given every opportunity to comply but did not and staff revoked the conditional use permit. He believes Home Depot has not been in compliance with their permitted or conditional uses at either store. He believes Home Depot should comply with the conditions and the zoning ordinance, be a good neighbor and run the business on a day to day basis of compliance.

Mr. Fujimoto reported to the Commission that the previous building permit has expired and the applicant is requesting that instead of a November 30, 2002 deadline that it be extended to February 1, 2003 to allow for completion of the wall.

In response to Mr. Richarson's comments, **Mr. Jaber** reported that Home Depot does not have any restrictions on the south end of the building and added that the north end of the building is in question. He stated he did not know he was in violation regarding parking stalls being utilized for product and will make sure that does not occur in the future. He also stated he was at his store at 5:00 AM and challenged the statements made by Mr. Richarson regarding that there was lumber outside at the north end of the building. Mr. Jaber stated that statement was false and that the only thing sitting out at the north end was a concrete truck, there was no lumber.

Motion to close the public hearing on Item No. 8.

M/S: Giordano/Nitafan

AYES: 7

NOES: 0

Commissioner Giordano commented that she is seeing a subjective view about whether compatibility has been solved. It is her opinion Home Depot has taken every step to ensure compatibility has been resolved. She wants to promote business and no additional penalties should be levied on a business that she doesn't see are necessary. She does not support the special condition for the wall to be in place.

In response to **Commissioner Galang's** request, **Mr. Jaber** stated he would provide his telephone number to Mr. Charlie Mitchell, Managing Agent to the Parc Metropolitan

Community Association. He expressed concerns that staff did not notify him of complaints against the store and why hasn't the City notified him. Later, **Ms. Heyden** reported

that staff has been dealing with not only this Manager but also Home Depot regional management and another Home Depot lawyer of the issues for well over 6 months. Chair Hay requested that if Mr. Jaber requests that Parc Metropolitan residents direct their complaints to him that he coordinates with staff if the current method of having staff receive the complaints is changed.

Ms. Heyden responded to **Commissioner Nitafan** that the task force is in tact and meets only on an as-needed basis. She will call the Homeowner's Association to give them Mr. Jaber's telephone number.

Motion to recommend Condition of Approval #21 and extend the applicant's Building Permit to February 1, 2003 in order to comply with the Condition.

M/S: Nitafan/Galang
AYES: 6
NOES: 1 (Giordano)

**9. PLANNED UNIT
DEVELOPMENT NO.
P-PD2002-2 & EIS
NO. P-EA2002-10**
*(Applicant: Christina
Martinez)*

Steve Burkey, Assistant Planner presented a request to replace an existing residence, that is legally nonconforming due to its location within the Crestline Zone of Protection and a southern setback less than 40 feet, on 4.6 acres at 1000 Country Club Drive (APN 29-03-014) with a new 11,200+/-sq. ft. house also located partially within the Crestline Zone of Protection and a reduced southern setback through a proposed PUD.

Mr. Burkey distributed a corrected staff report wherein Page 7 was revised to discuss building bulk and roof pitch and Page 9 was revised to correct a finding regarding CEQA and revised Condition of Approval #4, regarding barn demolition and Condition of Approval #6 regarding roof pitch. Mr. Burkey gave a lengthy powerpoint presentation of the project background and description of the project and plans.

The new zoning ordinance allows additions to non-conforming buildings if the addition conforms to all current standards. He reviewed the criteria for approving a PUD. The findings are that the project is exempt from CEQA as it meets the definition of a Class 3 Exemption, the project is a Planned Unit Development that complies with the relevant sections of the City's General Plan and Zoning Ordinance, and the proposed residence is of an attractive design that will complement the surrounding neighborhood and Hillside area. Mr. Burkey detailed staff's concerns but indicated the conditions address those concerns as written in the staff report. The environmental review was prepared due to proximity to geologic hazards and the geologic report cleared it of any significant risk. The City's reviewing geologist concurred with its findings.

Staff recommends approval of the PUD to City Council subject to recommended conditions as written in the staff report.

In response to **Commissioner Giordano**, Mr. Burkey stated is no specific outside obtrusive lighting that could be a problem.

Responding to a question from Commissioner Nitafoan about the ground shaking, Mr. Burkey reported that there has been no significant earthquake movement on the Hayward Fault since the existing building was built in 1973 and the Fault is several hundred feet below this home site. His experience is that the loose alluvial soils down on the valley floor have more potential to shaking than hillsides. There are more stringent codes for design standards of hillside homes. The risk from wild fires was not identified as a significant impact on this site. The main fire mitigation is to keep the vegetation down, sprinklers are required, and these houses are in the urban service area with public streets and fire access. Staff received two letters and one e-mail in support of the project. He also noted that a condition requires the applicant to connect to City water

Norman LaCroix, 1321 Hillview Drive, builder of the project introduced the applicant, Christina Martinez, a resident of Milpitas over 5 years. Mr. LaCroix introduced Scott Stottler, designer of the project who gave a powerpoint presentation to illustrate viewpoints through photosimulations to reflect the minimal view of proposed home. He stated they dealt closely with staff to meet all the City requirements and feel they have achieved that.

Mr. Lacroix gave a detailed description of his background and previous work in the City to illustrate his commitment to quality design and construction in the City. He also described Christina Martinez' background. Mr. Lacroix requested that all sub-conditions of approval under Condition #6 be deleted with the exception of the sub-condition regarding location of the building envelope.

Mr. Burkey confirmed that the barn would remain in use during construction to house construction materials. Mr. LaCroix confirmed they would follow City regulations when the barn is demolished. Mr. LaCroix and Mr. Burkey confirmed 55 trees, that range in size from 15 gallon to 48" box trees, will be planted along the western property line and would be strategically located to obscure views of the home.

Mr. LaCroix stated that the current home is on the Crestline; it is setback 22 ft. from the south property line. Construction will not be started before spring and will probably take approximately 18 months.

Mr. Richardson, 1920 Yosemite Drive commended Mr. LaCroix for proposing below grade construction for part of the home.

Ms. Wong, the neighbor behind the home, whose back yard is next to Ms. Martinez' home expressed concern with the roof height, and the noise of construction. Mr. Burkey explained that the new roof would not project any higher than the existing home and that the noise ordinance regarding approved daytime hours of construction. Chair Hay suggested if Ms. Wong has any questions she can contact Mr. Burkey.

Motion to approve the project subject to the Conditions of

Approval.

M/S: Galang/Nitafan

Amendment to the Motion by Commissioner Nitafan approved by the maker of the motion as follows:

Eliminate the first Condition of Approval bullet, under Condition 6, regarding the livable floor area in the building; eliminate the second bullet regarding the length of the residence's western elevation; retain the third bullet regarding setback of a minimum of 40 ft. from all property lines; retain the bullet referring to the 8 to 12 roof pitch as proposed by the applicant; retain the fourth bullet referring to extension of stone veneer; and retain the fifth bullet regarding the building envelope.

AYES: 7

NOES: 0

Dave Richarson, 1920 Yosemite Drive, noted he left the meeting at 10:10 PM and now returns at 10:30 PM. He showed Commissioners a cinderblock that was on a pallet in the north parking lot, along with about 4 other pallets in the north parking lot of Home Depot. He also showed the packing slip for the product. Chair Hay indicated the information would be passed on to staff.

**10. RESOLUTION
NO. 491-P-AD2002-
17**

Ms. Heyden introduced **Blair King, Assistant City Manager**, who presented a request for adoption of a resolution selecting the boundaries of the area to be added to Redevelopment Project Area No. 1 and approving a Preliminary Plan for the added area.

Mr. King noted this item was mentioned at the last Planning Commission meeting that an action by the Commission would be necessary.

In response to Mr. King's request that the City Attorney review any issues that pertain to Conflict of Interest issues for this item, Kit Faubion reported the following: The City Attorney's office has researched any potential conflict of interest regarding Chair Hay and Commissioners Williams, Nitafan, and Giordano. It was concluded there is no conflict of interest. Commissioner Williams lives outside the affected area but within 500 feet of the area to be added to the Redevelopment area. Chair Hay lives within the existing redevelopment area. After reviewing both of the home locations, reviewing the applicable FPPC regulations, her recommendation and advice to the Commissioners is that they may participate in this item under the public general exception. This allows that where a financial effect is indistinguishable from the effect on the public at large that the Commissioner may participate. She also looked at potential conflict of special interests for Nitafan and Giordano related to their employment as realtors. The opinion after looking at a newly adopted regulation, is to recommend both Commissioners may participate based on Regulation 18706. Their material financial effect is not reasonably foreseeable, so her opinion is that this kind of decision has many, many steps between the decision now and potential for houses to actually be developed. The review shows that all four Commissioners can participate and they just need to acknowledge it.

Mr. James Lindsay of the Planning Department presented slides and a summary of the proposed resolution regarding the expansion of Redevelopment Project Area No. 1. He noted the City is undertaking the process to amend the boundaries of this area to include the Midtown Area and to increase the Redevelopment Agency's capacity to pay for public improvements that have yet to be completed under the provisions of the Redevelopment Plan. The preliminary plan was prepared in accordance with the California Redevelopment Law and serves as the basis for the preparation of the amended redevelopment plan.

Mr. King indicated that the proposed area to be added is 692 acres. He stated that should the Commission approve the resolution, this action will be forwarded to the RDA Board for their action that would continue toward eventual adoption of the amendment.

In response to **Chair Hay's** two questions 1) As we expand this, is there a maximum of tax increment dollars we can generate and 2) is there a sunset provision for the length of time this will exist? Mr. King reported that with the existing redevelopment project area, because it was adopted prior to AB1290, a tax increment cap is required. The amendment that is being proposed would increase the tax increment cap on the existing redevelopment area. However on the amended area, the law does not require a tax increment cap. We are required to negotiate with other tax entities and a cap may evolve from that negotiation. Regarding time, the ability to incur debt as is related to the ability to collect tax increment is 20 years from date of adoption plus the ability to add 10 more if the plan is amended after 20 years. The ability to collect increments to pay that debt extends for 50 years from the date of adoption.

Mr. King advised that no hearing is required at this time, this meeting item is to inform you what the steps would be. The purpose of the preliminary redevelopment plan is to establish the boundaries of the project that would be under consideration. The 692 acres is consistent with the 1999 City Council Resolution declaring the survey area. After the Council acts, the City will be required to notify other entities of our intentions and will be required to circulate a notice of preparation for an EIR and prepare a variety of documents including a report to the City Council. The Redevelopment Plan is subject to review by the Planning Commission. Following that, there will be a joint public hearing that is required to be advertised for 4 consecutive weeks.

Mr. King added that the current zoning of the 692 acres is consistent with the Midtown Specific Plan. This proposal would not alter the zoning. It would simply reflect the zoning as is now or may be amended during the course of the redevelopment project.

Motion to adopt Resolution 491 (P-AD2002-17) selecting the boundaries of the area to be added to the Redevelopment Plan for Project Area No. 1 and approving a Preliminary Plan for the proposed amendment, based on the above findings.

M/S: Hay/Nitafan
AYES: 7
NOES: 0

**12. 2003 PLANNING
COMMISSION
MEETING SCHEDULE**

Ms. Heyden reported the 2003 schedule reflects only one meeting in November and one meeting in December, due to the holidays. There would be two meetings in February, one on February 5 instead of the 12th and then the second meeting would follow in two weeks. There was Commission consensus to accept the meeting schedule for Year 2003.

There being no further business, the meeting was adjourned at 12:00 a.m. to the next regular meeting of November 13, 2002. (The November 27, 2002 meeting is cancelled.)

**X.
ADJOURNMENT**

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VICKI LINDEMAN
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

November 13, 2002

- I.
PLEDGE OF ALLEGIANCE** Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II.
ROLL CALL** Present: Hay, Lalwani, Giordano, Nita fan, Sandhu and Williams
Absent: Galang
Staff: Fujimoto, Heyden, Judd and Pereira
- III.
PUBLIC FORUM** Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.
- Tambri Heyden, Planning Manager**, introduced **Veronica Rodriguez, Office Specialist**, who will now be the Recording Secretary at the Planning Commission meetings. Chair Hay welcomed Ms. Rodriguez.
- There were no public speakers.
- IV.
APPROVAL OF MINUTES** Chair Hay called for approval of the minutes of the Planning Commission meeting of October 23, 2002
October 23, 2002
- Ms. Heyden noted that there was an error on page 19 of the minutes, which noted the incorrect date for the next Planning Commission meeting. The date should be December 11, 2002.
- Commissioner Sandhu made the following correction to Page 17 which reads the following:
- Dave Richardson, 1920 Yosemite Drive, noted he left the meeting at 10:10 PM and now returns at 10:30 PM.***
- Motion** to approve the minutes of October 23, 2002 with the corrective changes.
- M/S: Nita fan/Lalwani
- AYES: 6
- NOES: 0
- ABSTENTIONS: 1 (Galang)

V. ANNOUNCEMENTS

Tambri Heyden, Planning Manager, announced that the Planning Commission will not be using the voting screen technology at tonight's meeting until they are trained for future meetings. She also announced the Subcommittee Rotation schedule, which includes Commissioner Sandhu and Commissioner Giordano. Vice Chair Lalwani is an alternate. Ms. Heyden also asked that the Commissioners return their Great Mall key, extra locker key, and that they return their old badge and receive their new badge for access to City Hall. She asked the Commissioners to join her for ten minutes after the meeting to show them the location of the locker room agenda for packet pick-up days.

Ms. Heyden reminded the Commission about Steve Burkey's retirement party scheduled for December 6, 2002 at the Sheraton Hotel, Barber Lane, in Milpitas.

Ms. Heyden also mentioned that Marina Rush, Associate Planner, will be extending her leave of absence and will keep the Commission posted regarding her return.

Chair Hay informed that the election is still unresolved between himself and Armando Gomez and that there is a two-vote difference and the provisional votes have not been counted. He mentioned that it would be premature to elect officers at tonight's meeting, and asked that Agenda Item No. 6 be postponed and the Commission concurred.

Commissioner Nitafan mentioned that the Knights of Columbus will be hosting a Thanksgiving dinner on November 28, 2002 at the Community Center from 11 a.m. to 3 p.m. for the needy. Volunteers and money donations are encouraged. The Commissioner provided his phone number for those with questions.

Commissioner Giordano announced that she and Vice Chair Livengood attended the Los Esteros Architectural Review Committee meeting last night. The Committee has a budget of \$1.8 million and recommendations are needed for a landscaping plan of the power plant off of Zanker Road and 237. The project is funded by the City of San Jose and a recommendation will be needed in three months.

Commissioner Williams needed clarification that the Planning Commissioners are considered employees of the City of Milpitas, but are limited in their area of the new City Hall. He felt that it is important for the Commission to meet with the Planning Division staff, and asked if this issue could be addressed.

Chair Hay noted that this is a legitimate concern, and asked staff if they could follow up with an answer.

Ms. Heyden indicated that she would raise this with the Building Use Committee meeting.

Vice Chair Lalwani announced that the Chamber of Commerce will be having a mixer at the Hungry Hunter in Milpitas on November 14, 2002 from 5 p.m. to 7 p.m. and that all prospective members and members are invited.

Ms. Heyden announced the annual recognition dinner for Commissioners that will be held on January 30, 2002 at the Crowne Sterling Suites hotel, and asked the Commissioners to notify Veronica Rodriguez with their recognition gift choice.

Chair Hay asked that this item be postponed and all Commissioners present agreed.

**VI.
ELECTION TO FILL
VACANT OFFICER(S), as
per Section 5.02 of Bylaws**

Chair Hay called for approval of the agenda with the change to postpone Item No. 6, Election to fill Vacant Officers, from the agenda.

**VII.
APPROVAL OF
AGENDA**

Motion to approve the agenda with the corrective change.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Galang)

**VIII.
CONSENT CALENDAR
Item Nos. 1, 2, 3, 4, 5,
6, 7, 8, 9, 11, 12 and 13.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 1, 2, 3, 4, 5,
6, 8, 9, 12 and 13**

Motion to close the public hearing on Consent Item Nos. 1, 2, 3, 4, 5, 6, 8 and 9. Consent Item Nos. 7 and 11 were continued to the December 11, 2002 Planning Commission meeting.

M/S: Nitafan/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Galang)

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 with staff recommendation and special conditions noted in the staff report.

***1 "S" ZONE APPROVAL-AMENDMENT P-SA2002-64, USE PERMIT P-UP2002-31 AND MITIGATED NEGATIVE DECLARATION P-EA2002-13:** Request to exceed the maximum allowed Floor Area Ratio in order to construct a 10,018 square-foot cafeteria building atop at-grade parking, at the rear of the developed parcel at 720 Sycamore Drive (APN 86-3-95). Applicant: Linear Technology Corporation (PJ 3147). Project Planner: Annelise Judd, 408-586-3273. (*Recommendation: Approval with conditions*)

***2 USE PERMIT NO. P-UP2002-40:** A request to locate a 1,200 square foot retail aquarium store at 115 N. Milpitas Boulevard (Beresford Square) (APN: 028-22-016). Applicant: Dr. Bao Le. Project Planner: Kim Duncan, 586-3283. (*Recommendation: Approval with conditions*)

***3 USE PERMIT NO P-UP2002-41:** A request to operate a 1500 square foot grocery store with video sales and rentals at 570 N. Abel Street (APN 22-07-004). Applicant: Vijay Reddi. Project Planner: Staci Pereira, 586-3278. (*Recommendation: Approval with conditions.*)

***4 "S" ZONE AMENDMENT NO P-SA2002-87:** A request to enlarge a pump house station by 120 square feet at 1500 Country Club Drive (APN 29-35-015). Applicant: Summit Pointe Golf Club. Project Planner: Staci Pereira, 586-3278. (*Recommendation: Approval of conditions to City Council*)

***5 12-MONTH REVIEW OF USE PERMIT NO. 1210:** A review of the recommencement of alcoholic beverage sales at Edgie's Billiards at 235 N. Milpitas Blvd. (APN 86-39-031) to assess any impact on police resources over the past 12 months. Applicant: Edgie's Billiards. Project Planner: Staci Pereira, 586-3278. (*Recommendation: Note receipt and file*)

***6 "S" ZONE AMENDMENT NO. P-SA2002-69 AND
USE PERMIT AMENDMENT NO. P-UA2002-20:**

Request to add 12 outdoor seats to Burrito Express Restaurant at 275 Jacklin Road in Foothill Shopping Center (APN 26-28-029). Applicant: Shappell Industries. Project Planner: Staci Pereira, 586-3278. (*Status: Withdrawal of application by applicant*)

***7 USE PERMIT NO. P-UA2002-21:** Request for a parking reduction to add additional seating and beer and wine sales at 89 S. Park Victoria Drive (APN 88-04-048). Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278. (*Recommendation: Continue to December 11, 2002*)

***8 USE PERMIT NO. P-UP2002-34:** A request to locate a 24,000 square foot religious facility at 901 Hanson Court, including offices, classrooms, kitchen facilities, children's center and multi-purpose rooms with a joint use parking arrangement. Applicant: North Valley Christian Fellowship. Project Planner: Troy Fujimoto, 408-586-3287. (*Recommendation: Approval with conditions*)

***9 SIX-MONTH REVIEW:** A six month review of Use Permit Amendment No. 1167.22 (Outback Steakhouse at 1246 Great Mall Drive) to verify compliance with special conditions of approval regarding noise, odors, waste handling and seating. Applicant: Outback Steakhouse. Project Planner: Troy Fujimoto, 408-586-3287. (*Recommendation: Note receipt and file*)

***11 USE PERMIT AMENDMENT NO. P-UA2002-8:** A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating at 231 West Calaveras Boulevard (APN: 022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto, 586-3287. (*Recommendation: Continue to December 11, 2002*)

***12 "S" ZONE AMENDMENT NO. P-SA2002-84:** A request to amend an existing sign program and the addition of a new six (6) foot tall freestanding sign at 1601-1649 S. Main Street (APN: 086-21-073). Applicant: Mark H. Snow. Project Planner: Troy Fujimoto, 586-3287 (*Recommendation: Approval with conditions*)

***13 "S" ZONE AMENDMENT NO. P-SA2002-88:** A request to locate a new enclosure and ground extraction system at 950 E. Calaveras Boulevard (APN: 086-29-027). Applicant: Cambria Environmental Technology.

Project Planner: Troy Fujimoto, 408-586-3287.
(*Recommendation: Approval with conditions*)

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Galang)

IX. PUBLIC HEARING

Chair Hay opened the public hearing on Agenda Item No. 10.

1. PLANNED UNIT DEVELOPMENT NO. P- PD2002-1 ("EDSEL COURT"): 1129 and 1143 Edsel Drive. Applicant: Vicente Songcayawon.

Annelise Judd, Assistant Planner, presented a request to construct a six-unit apartment development on the partially vacant 0.4 acres located behind 1129 and 1143 Edsel Drive and recommended approval to City Council with special conditions and recommendations noted in the staff report.

Commissioner Nitafan asked the implications the existing property has since it is non-conforming.

Ms. Judd responded that the City can approve reduced setbacks and standards via the PUD process.

Commissioner Nitafan asked whether this project has to be approved by City Council and Ms. Judd responded "Yes".

Vicente Songcayawon, Applicant, gave some background history of the project, and mentioned that part of the reason it was proposed was to improve the area. Mr. Songcayawon owned four-plexes near Dempsey Road and the apartments were maintained on the outside. He thanked Mayor Manayan and City staff for assisting in the planning process and mentioned that construction will start next year to upgrade the neighborhood four-plexes, and that currently, the roofs have been replaced, and the stairways and buildings have been repainted.

Eugene Sakai, Architect, wanted to thank staff for their cooperation, and mentioned that Edsel Drive is a unique and challenging site to work with. The project has been a long process of 2 years, and is pleased that construction will begin soon.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing on
Agenda Item No. 10**

Motion to close the public hearing on Agenda Item No. 10.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Galang)

Motion to approve Planned Unit Development No. P-PD2002-1 with staff recommendations and conditions noted in the staff report.

M/S: Nitafan Sandhu

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Galang)

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:45 p.m. to the next regular meeting of December 11, 2002.

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VICKI LINDEMAN
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

December 11, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams

Absent: None

Staff: Duncan, Fujimoto, Heyden, Judd and Pereira

**III.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no public speakers.

**IV.
APPROVAL OF
MINUTES**

November 13, 2002

Chair Hay called for approval of the minutes of the Planning Commission meeting of November 13, 2002.

There were no changes to the minutes.

Motion to approve the minutes of November 13, 2002 as submitted.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Galang) – Absent at the November 13, 2002 meeting.

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced that Kit Faubion, City Attorney, would not be present at tonight's meeting and that a memorandum is being drafted for circulation regarding the Attorney not being present at all Planning Commission meetings. Ms. Heyden also announced that recruitment will begin for the vacant Assistant Planner position next week and the vacant Associate Planner position recruitment begins the 2nd week of January. Ms. Heyden also mentioned a change to Special Condition No. 2 of Use Permit Amendment No. P-UA2002-26 and "S" Zone Amendment No. P-SA2002-102 which has been changed to the following:

2. Prior to any sign permit issuance, the applicant shall submit a revised sign program reflecting that the sign

letter and logo height do not exceed the height of the existing cabinet signs and in no case exceed sixteen (16) inches. In addition, the revised sign program shall indicate the approved letter colors as red, green and blue.

Commissioner Giordano announced that she attended the Silicon Valley Manufacturing Housing Leadership Council meeting sponsored by South County Housing on November 21, 2002 which discussed a self-help project in Gilroy. She also brought back information to the Commission, which she distributed. Commissioner Giordano also mentioned that the Calpine Power Plant would be mitigating the visual impacts soon with 45-50, 25 foot tall trees that will be planted to soften the visual impact of the Power Plant off of Highway 237, and noted that the final meeting to approve the mitigation design will be at the end of January to early February.

Commissioner Giordano also commented that the tree lighting ceremony was well attended by the community and was a very elegant event.

Commissioner Giordano added that she would like to see a liaison and greater communication between the Community Advisory Commission (CAC) and the Planning Commission (PC) and recommended that this be agendaized for further discussion.

Chair Hay commented that the CAC and the PC had a liaison before, but in time, both Commissions did without as it takes time away from duties as a Commissioner. He also noted that any Commissioner that wants to attend those meeting can do so.

Commissioner Nitafan commented that he was a liaison to the CAC and the PC and that he told the CAC that if they needed to contact the PC, to let the Chair know and he would respond.

Commissioner Sandhu suggested that the CAC send one of their members to report to the Planning Commission.

Vice Chair Lalwani suggested that the CAC and PC rotate liaisons every few months.

After further discussion, staff and the Planning Commission agreed to agendaize this topic at the next meeting.

Commissioner Nitafan thanked the volunteers and the community for helping out at the Thanksgiving dinner held by the Knights of Columbus which was very

successful this year and noted that approximately 2,000 people were fed.

Commissioner Nitafan also announced that the deadline to apply or to nominate someone for Citizen of the Year is mid February 2003.

Chair Hay noted that he attended Steve Burkey's retirement dinner and it was well-put together and congratulated Mr. Burkey.

**VI.
APPROVAL OF
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 1, 2, 3, 4, 5
and 6**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Regarding Agenda Item No. 1, S-Zone Amendment P-SA2002-104, Commissioner Giordano asked if the reason to remove the koi pond was to meet the impervious coverage ratio or the work required it to be moved.

Kurt Kline, Rockwood Design, 14554 Big Basin Way, Saratoga, responded that the work required propane which required an exterior pad to support the mechanical devices, so the pond had to be removed.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 3, 4 and 5.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 1, 2 and 5.**

Motion to close the public hearing on Consent Item Nos. 1, 2 and 5. Consent Item No. 3 was continued to the January 22, 2003 Planning Commission meeting and Consent Item No. 4 was continued to the February 12, 2002 meeting.

M/S: Nitafan/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. Nos. 1, 2, 3, 4, 5 and 6 with staff

recommendation and special conditions noted in the staff report.

- *1 S-ZONE AMENDMENT (P-SA2002-104):** A request to install a 5-foot high property fence and locate outdoor equipment to be screened with a wall in the Hillside area at 442 Vista Ridge Drive (APN 042-30-043). Applicant: Carol Tao Petersen. Project Planner: Troy Fujimoto, 408-586-3287. *(Recommendation: Recommend approval with conditions to the City Council)*
- *2 USE PERMIT NO. 1608 AND P-UA2002-24:** 6-month follow-up review of Use Permit No. 1608 regarding recycle facility, to assess the recycling operation, including any impacts to surrounding land uses. Applicant is also requesting an amendment to this Use Permit (P-UA2002-24) to allow recycling by individual patrons and the general public at the subject site, 945 Ames Avenue (APN 86-31-14). Applicant: Environmental Management Systems (PJ 2262). Project Planner: Annelise Judd, 408-586-3273. *(Recommendation: Note receipt and file the six-month follow-up review. Approve the Use Permit-Amendment request with conditions.)*
- *3 USE PERMIT NO. P-UA2002-21:** Request for a parking reduction to add additional seating and beer and wine sales at 89 S. Park Victoria Drive (APN 88-04-048). PJ #2306. Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278. *(Recommendation: Continue to January 22, 2003)*
- *4 USE PERMIT AMENDMENT NO. P-UA2002-8:** A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating at 231 West Calaveras Boulevard (APN: 022-25-041). PJ #2245. Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Continue to February 12, 2003)*
- *5 S-ZONE AMENDMENT NO. P-SA2002-102 & USE PERMIT AMENDMENT NO. P-UA2002-26:** Request to amend the previously approved sign program for Calaveras Square at 122-148 W. Calaveras Blvd. (APN 22-24-037) to revise the allowable building sign type and colors and to amend the previously approved use permit (No. 325) for an existing freestanding sign. Applicant: Allen Signs. Project Planner: Kim Duncan, 586-3283. *(Recommendation: Approval with Conditions)*
- *6 S-ZONE AMENDMENT NO. P-SA2002-94:** A request to remove 5 protected trees at Victorian Square shopping center and replace at a ratio of

approximately 3:1. Applicant: Banducci Architect Associates. Project Planner: Staci Pereira, 586-3278.
(Recommendation: Approval with Conditions)

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

VIII.

UNFINISHED BUSINESS

Chair Hay opened the Unfinished Business on Agenda Item No. 7.

PERMIT REVIEW (P-AD2002-18): *Follow-up report on 1233-1257 Jacklin Road Shopping Center.*

Annelise Judd, Assistant Planner, presented a follow-up review regarding noise complaint associated with early morning commercial property maintenance activities at 1233-1257 Jacklin Road. This presentation was City initiated on behalf of Park Victoria Townhomes residents who complained of BFI pickup and noise. Ms. Judd recommended "Note receipt and file" of the follow-up report.

Chair Hay commended staff for following up on this request and for putting a BFI policy in place.

Commissioner Nitafan asked if the neighbors were communicated that the issue was resolved.

Ms. Judd responded that a public notice was sent out to neighborhood residents informing them of the item on tonight's Planning Commission meeting.

Chair Hay commented that if residents had any future problems, they should please call City staff.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

IX.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:25 p.m. to the next regular meeting of January 8, 2003. Chair Hay wished everyone a Merry Christmas and Happy New Year.

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

